HISTORY OF MASSACHUSETTS STATUTES RELATING TO DELINQUENT YOUTH

Governor's Anti-Crime Council

Juvenile Code Study and Revision Project

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PREFACE

The following is a comprehensive history of the delinquency related legislative enactments in Massachusetts. It is unfortunate, for our purposes, that insight into the problem and proposed solution being addressed by the individual enactments is difficult to discern. This is due to the fact that, traditionally, very little legislative history of Massachusetts statutes is recorded and stored by governmental agencies. Nonetheless, it is our hope that this history will serve as a valuable resource in our ongoing effort to revise the current delinquency statutes into a concise yet comprehensive and comprehensible delinquency code.

I would like to take this opportunity to acknowledge the following people, whose hard work was essential to the successful compilation of this history: Commissioner Edward Murphy, and the able staff of the Department of Youth Services; the staff of the State House Library; the staff of the State Archives Division of the Secretary of State; and project legal research assistants Elaine Eliopoulos, Gail Finestone, Albert Hayeck, Gladys Santiago, and Steven Weil. A special thank you to the project's principal researcher, Jurgen Kern, for his enormous contribution in quantity as well as quality of composition, and to Milagros Rivera, project secretary, for her tireless dedication to the typing of this history.

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INTRODUCTION

This history of Massachusetts statutes relating to youthful offenders was compiled in the spirit of following the time honored tradition of understanding the past prior to determining the best way to move forward. By tracking the various legislative enactments over the years, a record of prior legislative successes and failures can be documented or presumed. Additionally, the source of some of the present code's inconsistencies and ambiguities can be identified. The production of this "history" is vital to the integrity of this entire process, the goal of which is to recommend corrective legislation for the current delinquency statutes.

The history is comprised of an exhaustive compilation and analysis of all of the legislative enactments related to the process employed when a delinquent act or criminal offense has been alleged to have been committed by a juvenile. It specifically includes the adjudicatory, dispositional and treatment stages of the process as presently regulated by Chapters 18A, 119 and 120 of the Massachusetts General Laws.

Up until 1921 the Massachusetts General Court periodically directed the revision and codification of the then-existing provisions of the Massachusetts Acts and Resolves. There were five such revisions and codifications: the Revised Laws of 1836, the General Statutes of 1860, the Public Statutes of 1882, the Revised Laws of 1902, and the General Laws of 1921. In 1932, with the publication of the tercentenary edition of the General Laws, the General Court provided instead for the "continuous consolidation of the general statutes" and directed that the offices of counsel to the Senate and House of Representatives "shall, so far as possible, draft all bills for legislation as general statutes in the form of specific amendments of or additions to the General Laws" (Introduction to Tercentenary Edition). The five preceding revisions and codifications had, by comparison, a much broader mandate. They were conceived "for consolidating and arranging the general statutes of the commonwealth...with authority to omit redundant enactments and those which may have ceased to have any effect or influence existing rights; to reject superfluous words, and condense into as concise and comprehensive a form, as is consistent with a full and clear expression of the will of the legislature, all circuitous, tautological, and ambiguous phraseology; to suggest any mistakes, omissions, inconsistencies, and imperfections which may appear in the laws to be consolidated and arranged, and the manner in which they may be corrected, supplied, and amended." (Preface to the General Statutes of 1860. The Preface to the Public Statutes of 1882 and the Revised Laws of 1902 contains almost the identical language).

The General Statutes of 1860, the Public Statutes of 1882, the Revised Laws of 1902, and the General Laws of 1921 all have some form of a juvenile code. The Revised Laws of 1836 have no juvenile code per se, but have instead one related enactment which provides for incarceration in facilities other than the state's prisons for juveniles meeting certain criteria. The General Statutes of 1860, by contrast, has two chapters dealing with the reformation of juvenile offenders: Chapter 76 on the State Reform School for Boys, and Chapter 75 on the State Industrial School for Girls. The Public Statutes of 1882 combined these two chapters into one chapter, Chapter 89, "Of the Lyman School for Boys, the Industrial School for Girls and the Reformation of Juvenile Offenders." 1906 saw the legislative enactment of St. 1906, c. 413, which enacted for the first time in Massachusetts a real delinquency code, civil in nature, and quite different from the essentially criminal code for juvenile offenders which had existed heretofore. The provisions of the 1906 enactment were combined with the then-existing provisions on training schools and juvenile offenders of the last major recodification of the general statutes, the General Laws of 1921. The material on juvenile delinquency and juvenile offenders was placed in Chapter 119 of the General Laws, along with other material on the care and protection of children. The provisions regarding the training schools were placed separately in Chapter 120 of the General Laws of 1921.

The 1906 enactments pertaining to juvenile delinquency are a watershed in the development of the juvenile delinquency code in Massachusetts, and they serve as the basis for the present day juvenile code. In tracing the history of the juvenile code from 1906 to the present day it is desirable to examine the changes in the code amendment by amendment, and this has been done in the post-1906 analysis of Chapters 18A, 119, and 120 of the General Laws. In that analysis, all the sections of those three chapters have been analyzed for the effect of each amendment, from their original enactment until the present day, or in the case of sections carried over from the Revised Laws of 1902, from their codification in those Revised Laws.

The pre-1906 juvenile codes were not examined in this amendment by amendment fashion primarily because each of the revisions and codifications between 1860 and 1902 was liberal in changing the wording of individual code sections and the overall structure of the code. Instead, the pre-1906 analyses uses a "flashpoint" methodology, in which the juvenile offender code was examined in considerable detail as it existed at the time of each of the three revisions and recodifications, as well as the final post-1906 recodification in 1921.

The General Statutes of 1860, the Public Statutes of 1882, and the Revised Laws of 1902 will be examined according to which substantive provisions were added to the body of the juvenile offender laws, which provisions were deleted, and which provisions were carried over. For the provisions that were carried over, the examination will concern itself with how they were changed, if at all. The General Laws of 1921 will also be compared to its forerunner juvenile codes, and there will be a cursory examination of which provisions of the 1921 code have been carried over to the present day and which provisions have since been deleted.

An overview is included to offer the opportunity to isolate and briefly consider just the comprehensive delinquency related legislative amendments from the past one hundred and twenty-five years. The overview consists of a review of the pre-1906 revisions and codifications, together with summary analyses of the 1906 and 1948 enactments. The 1906 and 1948 enactments brought radical changes to the juvenile justice system in Massachusetts and require individual attention. Therefore, in addition to an analysis of the contents of each act, insight into the underlying philosophy of each is obtained through the examination of a 1909 Harvard Law Article by Julian Mack and a 1948 report by the legislative commission on delinquency prevention and rehabilitation.

It should be noted that this analysis omits some material on the administration and governance of the training schools, and material on the administration of the Youth Service Board and its successors. The reason for these omissions is that they are not germane to the delinquency issues that are the focus of this juvenile code study project.

OVERVIEW

The enactment of St. 1906, Chapter 413, of the Massachusetts Acts and Resolves, is generally regarded as the birth of the delinquency code in Massachusetts. Though these statutes first deemed the proceedings against juvenile offenders to be civil in nature, the pattern of treating juvenile offenders differently than their adult counterparts began in 1836. One solitary enactment of the Revised Laws of 1836 provides that certain boys and girls convicted of an offense punishable by incarceration in the state prison will serve any sentence in a house of correction, county jail or the house of reformation. This was the Commonwealth's initial response to the acknowledgement of the distinctions between juvenile and adult offenders.

The General Statutes of 1860, the Public Statutes of 1882, and the Revised Laws of 1902 all have some form of a juvenile code as subsequently described. The General Statutes of 1860 carry over the 1836 prohibition on incarceration of juveniles in state prison and in Chapters 75 and 76 provide for the following additional dispositional alternatives. If the offense alleged does not call for punishment of life imprisonment and the juvenile is deemed a proper subject, he or she may be committed to either the State Reform School for Boys or State Industrial School for Girls. Any girl committed, by a judge or commissioner, to the Industrial School is kept, disciplined, instructed, employed and governed under the direction of the trustees until one of three things happens: (1) she is "bound" out, (2) she arrives at age eighteen, or (3) she is otherwise legally discharged. The term "bound" out refers to a form of indenture where a child serves a master as an apprentice or servant.

If under fourteen years of age, a boy could be committed, by a judge, to either the State Reform School or its Nautical Branch. If over fourteen, the boys could be committed only to the Nautical Branch. The Nautical Branch instructs the boys in navigation and the duties of seamen. If the trustees contract to send a boy to sea then such a voyage operates as a discharge from the institution. Boys could also be "bound" out or they could remain committed until the age of twenty-one.

There were no apparent due process requirements in regard to the examination, trial and commitment of juvenile offenders in Chapters 75 and 76.

The Public Statutes of 1882 combined the provisions of Chapters 75 and 76 into its new Chapter 89. The Public Statutes of 1882 contributed a good deal of new material to the law of juvenile offenders, and made some significant changes to the General Statutes of 1860.

Two of the big changes provided for by these enactments have to do with which tribunals could hear cases as to juvenile offenders, and what age group of juveniles was subject to juvenile jurisdiction. Under the General Statutes of 1860, girls could be tried and committed only before judges of the probate court or specially appointed commissioners; boys could be tried and committed by judges of the probate or superior court. In both cases juveniles could initially be brought before courts of criminal jurisdiction, but unless the juvenile was charged with a very serious offense or was for some other reason deemed to be an unsuitable subject for the reform school, transfer for the actual juvenile hearing had to be made from courts of criminal jurisdiction to those courts empowered to hear juvenile cases. Under these Public Statutes, by contrast, courts of criminal jurisdiction have the power to hear juvenile cases themselves. They must simply do so in separate sessions entitled the "sessions for juvenile offenders."

Another change contained in the Public Statutes is that the age limitation for juvenile offenders was now the same for boys and girls, upped to between the

ages of seven and seventeen. Under the General Statutes, only boys under the age of sixteen and girls between the ages of seven and seventeen were subject to juvenile jurisdiction. Additionally, the term of detention was also changed for girls. Previously it had been until the girl turned eighteen. Under, the Public Statutes, as had been true for boys before, the term of detention became until the girl turned twenty-one.

The Public Statutes also added a number of substantive provisions to the law of juvenile offenders. For one thing, the Public Statutes added an enactment regarding the formal procedures of bringing a complaint against a juvenile, much of which has been carried over to the present day. The Public Statutes also added a provision on pre-trial detention and the right to bail, a provision allowing for corporal punishment in the Reform School, and a provision on the transfer of girls committed to the Industrial School, to the Reformatory for Women. Significantly, the Public Statutes added a number of provisions regarding the State Board of Health, Lunacy and Charity. The State Board, a precursor to the Department of Public Welfare, seems to have functioned very much in the capacity of providing for and protecting the interests of children. Officials of the State Board could show up at juvenile sessions and advocate on behalf of the accused juvenile. More generally the State Board could request that a child appearing before a juvenile session be entrusted into its custody, regardless of whether the child was found guilty of anything, to be placed as the State Board saw fit.

Eliminated by the Public Statutes of 1882 were the provisions relative to the Nautical Branch of the State Reform School, which had been dismantled during the intervening time period.

Chapter 86 of the Revised Laws of 1902 carried over most of the material of the Public Statutes of 1882 in substantially unchanged form. The changes that were made fall primarily into two categories: (1) changes enacted to enhance the welfare and safety of children, especially younger children, and (2) changes that made provisions formerly applicable to either only boys or only girls applicable to both.

In the category of changes made to enhance the welfare and safety of children, the Revised Laws did the following: (1) they set a maximum age for the commitment of boys to the Lyman School at fifteen, and a maximum age for the commitment of girls to the Industrial School at seventeen, and they provided that boys committed to the Lyman School who turned out to be over fifteen would have their sentences revised; (2) they provided that only children who were twelve or older could be held in a jail unless admitted to bail; children under twelve who were not admitted to bail had to be committed to the State Board of Charity; (3) they provided that no child under twelve could be committed to jail, a house of correction or the state farm upon conviction of a crime unless the crime committed was punishable by death or life imprisonment, and (4) they deleted a provision allowing for the transfer, in certain cases, of girls committed to the Industrial School, to the Reformatory for Women.

Significantly, the Revised Laws did not change the age limit of juvenile jurisdiction in general. Juveniles between the ages of seven and seventeen who are charged with an offense not punishable by death or life imprisonment were still subject to juvenile jurisdiction.

The remainder of the code remained substantially unchanged between 1882 and 1902. Provisions carried over included those on who can hear cases, on juvenile jurisdiction, on the instruction of children committed, on the powers and duties of trustees and superintendents, on indenture, on the State Board of Charity, and some miscellaneous provisions such as those on the commitment of vagrant girls and aid to destitute girls.

The 1906 enactments pertaining to juvenile delinquency are a watershed in the development of the juvenile delinquency code in Massachusetts, and they serve as the basis for the present day juvenile code. Contained within the sixteen sections of St. 1906, c. 413 are a number of important additions to and revisions in the law governing juvenile offenders. These substantive changes fall primarily into four categories: (1) the definitional establishment of the concepts "delinquency" and "waywardness"; (2) the relative decriminilization of the juvenile process; (3) the establishment of a defined juvenile court system; and (4) a variety of provisions designed for the protection of children. The most important of these changes is perhaps the relative decriminilization of the juvenile offender process. This decriminilization is intimately bound up with the concepts of delinquency and waywardness, and its effect is that for a certain category of offenses (generally any offense not punishable by death or life imprisonment) non-criminal delinquency proceedings must be begun against children between the ages of seven and fourteen, and may be begun against children between the ages of fourteen and seventeen. There are numerous exceptions to this general rule of decriminilization which tend to emasculate its impact. Criminal proceedings may be begun against any child who commits an offense punishable by death or life imprisonment, against any child between the ages of fourteen and seventeen who has committed a criminal offense, and against any child against whom delinquency proceedings have been dismissed because he or she is deemed an unsuitable subject for delinquency proceedings. Nevertheless, the importance of the precedent of relative decriminilization is not to be underestimated in the development of the juvenile code of the Commonwealth.

St. 1906, c. 413, also established a more particularly defined court system within which juvenile complaints would be handled. Previously, juvenile complaints were handled by police courts, district courts, municipal courts, trial justices, judges of probate, specially appointed commissioners, and in the case of appeals, the superior courts, some of which did and some of which did not have separate juvenile sessions. Now juvenile complaints initially would be handled only in the juvenile sessions of district and municipal courts, and appeals in a juvenile session of the superior courts. This "session for children" with its separate docket would be held, as far as practicable, in rooms not used for criminal trials (The Boston Juvenile Court was established later in this same year.)

Another important invention of St. 1906, c. 413 was the introduction of probation officers as an important part of the juvenile justice system. The probation officer was to investigate the child's character, school performance, environment and prior complaints and make an extensive report on his findings to the court.

St. 1906, c. 413 also enacted numerous provisions which were designed to make the juvenile justice system less harsh and foreboding, and to maximize the "parens patriae" aspects of the system. These provisions include: that evidence from or the record of a delinquency adjudication is not to be used in any other court proceedings except a subsequent delinquency or criminal trial against the same juvenile; that the age limit for summoning children, as opposed to arresting them, was upped from under twelve to under fourteen; that a child adjudicated wayward or delinquent may not be committed to a jail or house of correction; that the minimum age limit for detention in a house of correction or jail has been upped from twelve to fourteen, and the inclusion of lock ups and police stations as places where children under fourteen are not ordinarily to be detained; that the provisions on bail have been expanded so that (1) the age limit for children who must be committed to the State Board of Charity if they cannot make bail has been upped from "under twelve" to "under fourteen", and (2) that children fourteen and over who cannot make bail can be committed to jail or to the custody of a probation officer instead of just to jail; and that delinquency cases against children between seven and fourteen must be dismissed before criminal charges may be brought against them.

The introduction of the concept of "parens patriae" into the Commonwealth's juvenile offender laws is clearly demonstrated by St. 1906, c. 413, s. 2.

> "This act shall be liberally construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under this act shall not be deemed to be criminal proceedings."

This statute has survived intact and is embodied in G.L. 119, s. 53., of the current statutes.

Julian Mack in his often quoted 1909 law review article, The Juvenile Court, 23 Harv. L. Rev. 104 (1909) reported on the changing philosophy of the public over the past century as to the treatment of juvenile offenders.

> "It did not aim to find out what the accused's history was, what his heredity, his environments, his associations, it did not ask how he had come to do the particular act which had brought him before the court. It, put but one question, "Has he committed this crime?" It did not inquire, "What is the best thing to do for this lad?" It did not even punish him in a manner that would tend to improve him; the punishment was visited in proportion to the degree or wrongdoing evidenced by the single act; not by the needs of the boy, not by the needs of the state.
>
> Today, however, the thinking public is putting another sort of question. Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why is it not the duty of the state, instead of asking mercifully whether a boy or a girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen."

Mack goes on to report that "parens patriae" philosophy had been practiced by the English over the prior two centuries, and that it's application to the Commonwealth's juvenile justice system is consistent with the position of Massachusetts as a leader in the area of providing foster care for permanently dependent or neglected children.

In 1948, the legislature followed the recommendations of its special commission on delinquency prevention and rehabilitation and adopted, virtually verbatim, the commission's proposed legislative amendments. The provisions of St. 1948, c. 310 deal mainly with the post-adjudication or dispositional aspects of the juvenile justice process. These forty-five amendments fall primarily into three categories: (1) the creation and organization of the Youth Service Board and the delineation of its purposes; (2) the change in the court process to provide for commitment of an adjudicated juvenile to the Board by the court; (3) the transfer of responsibility for the training schools from the trustees to the Board and the consequential duties of the Board toward the juveniles committed to it.

The Youth Service Board was to consist of three members with the chairman acting as the executive and administrative officer of the Board.

The purposes of the Board were to include: to serve as the commonwealth's correctional agency for all wayward and delinquent children, habitual truants and school offenders; to develop programs to reduce and prevent delinquency; to establish and operate facilities for the detention, diagnosis, treatment and training of committed juveniles and to assist conditionally released juveniles in the acquisition of employment and in leading a law abiding existence; to conduct continuing inquiry into the effectiveness of the integrated rehabilitative treatment methods which it employs.

St. 1948, c. 310 also provided that a child adjudicated delinquent can be committed, by the court, to the Youth Service Board which now had the authority to determine the appropriate placement. The court could not commit such child directly to any of the industrial schools or any other institution operated for the custody, care and training of wayward or delinquent children. This amendment was in stark contrast to the existing statute which gave the court the authority to commit directly to the institutions. However, the court's permission was still required for the child to be returned to his own home immediately after commitment to the Board.

The transfer of the rights, responsibilities and power of the training schools to the Board and its consequent duties to committed children, mandated by this act include the following:

To manage and care for the training schools and all other facilities of similar purpose; to appoint the various superintendents, officers and employees; to establish rules for the institutions; to re-examine all children committed to institutions annually; to permit the child his liberty if it is determined to be conducive to law abiding conduct; to retain custody of all delinquents committed until the age of twenty-one or age twenty-three if after conviction of a criminal offense.

The Board was also required to order the retention of custody over a committed delinquent who had attained the required age for discharge if it determined that if released, he would be physically dangerous to the public. The Board then is required to petition the court for review of this order. If the court affirms the order then the committed delinquent remains in the custody of the Board until discharge or a new extension is sought, within two years if the commitment was for a delinquent charge or within five years if the commitment was for a criminal offense.

Additionally, St. 1948, c. 310 made significant alterations in the definition of delinquency and the jurisdiction of the courts. Subsequent to this enactment, the situation with regard to the institution of criminal proceedings against children under seventeen was as follows:

(1) No child between seven and fourteen, unless he was charged with an offense punishable by death, could be subject to the institution of criminal proceedings regardless of the crime the child had allegedly committed. In contrast, prior to this enactment any child between the ages of seven and seventeen could have criminal charges instituted against it subsequent to the dismissal of a delinquency complaint, and any child charged with committing an offense punishable by life imprisonment would automatically have been tried criminally before a superior court.

(2) A child between the ages of fourteen and seventeen charged with an offense punishable by life imprisonment now had to have a delinquency complaint brought and dismissed before he could be tried criminally before a district court or trial justice. Only if those courts determined that the child was not a suitable subject for commitment to the Youth Service Board could the child then be transferred to stand trial before the Superior Court. Prior to this enactment, any child between seven and seventeen charged with an offense punishable by life imprisonment would automatically be tried before a superior court.

This act also provided further protection for the juvenile through the addition of the following provisions: withholding the records of commitment from public inspection; mandating that a conviction would not disqualify a juvenile for future public service and that discharge shall have the effect of setting aside the conviction. It also established a minimum age, twenty-one, at which a person could be transferred to the Department of Correction.

As alluded to earlier, the special commission on delinquency prevention and rehabilitation had a great deal of influence regarding the passage of Stat. 1948, c. 310. The commission report, submitted in January of 1948, contains the underlying policy rationale for various amendments. The inclusion of these comments offers the rarest of opportunities for a glimpse at legislative intent in Massachusetts, being careful to recognize that the comments are those of a legislative commission and not the legislature itself.

The change in the court's authority to commit, which had previously been directly to the training schools and was now changed to the Youth Service Board only, was viewed by the commission as ".....essential if there is to be any improvement in the quality of care and rehabilitative service given by the training schools." The commission which had earlier described the training schools as "juvenile prisons" found that, "[i]n terms of the demoralizing effect upon the children lodged in them, this commission believes that these schools are a disgrace to the Commonwealth."

The approach of having one agency responsible for the handling of delinquent and wayward children, through the establishment of the Youth Service Board, was undertaken for the purpose of applying the "modern knowledge of human behavior to the treatment and rehabilitation of young offenders." The commission envisioned a three step process as follows:

> "The first step is diagnosis, - physical, mental, emotional and social, - to determine, if possible, why a child is delinquent and the type of treatment most likely to restore him to acceptable behavior. The Board is required to make this thorough study of each child, on commitment. This may be done in the existing training schools or in a separate reception and diagnostic center. The job requires a team consisting of a pediatrician, psychiatrist, psychologist and social investigator, plus properly trained teachers and other supervising personnel.
>
> The second step is treatment to fit the diagnosis. Accordingly, the Board may place the child under supervision in his own home or in a foster home, or in one of the training schools, or in any public or private institution that can best meet the particular child's needs for treatment and retraining. The Board is given control of the three training schools in order to control commitments to them not merely by age, but according to the needs of the youngsters, and thus to transform them eventually into treatment centers for specialized groups capable of effectively re-educating children. Any other training schools that may be established by the Commonwealth in the future will also come under the Board so that it may provide a wider variety of units to fit the needs of different categories of personality disorders.
>
> The third step is the goal of the whole process, namely, successful replacement in the community. The Board is

> necessarily the paroling agency and responsible for supervision of parolees. The intent of the act is to return a child to the community as soon as this can be done with some hope of success, so the Board has power to grant parole as well as to discharge at any time."

Since 1948 there have been a number of developments more modest than those of the enactments of 1906 and 1948. Still, they deserve mention here. One such development was the elimination of the concept of "waywardness" from the code in 1973. Waywardness was defined as being between the ages of seven and seventeen and "habitually associat[ing] with vicious or immoral persons, or...growing up in circumstances exposing [one] to lead an immoral, vicious, or criminal life." The elimination of waywardness coincided with the establishment of the provisions on "Children In Need of Services" in Chapter 119, sections 39E through 39J of the Massachusetts General Laws, and amounted to a transfer of "status offenses" out of the delinquency section of the juvenile code. The new Children in Need of Services provisions defined four "offenses" for which a juvenile could be subjected to the jurisdiction of the juvenile court: being a runaway, being a stubborn child, being a truant, or being a school violator. Dispositional options upon adjudication included (1) leaving the child at home under specific conditions, (2) placing the child with an appropriate individual or child care agency, or (3) placing the child in the custody of the Department of Public Welfare. Since the establishment of the Department of Social Services in 1978 children adjudicated to be in need of services may be committed to that Department instead of to Public Welfare. "Wayward children," by contrast, were subject to the same dispositional options as children adjudicated delinquent (including commitment to the Department of Youth Services), except that wayward children could not be transferred to the criminal courts under any circumstances.

A second development was the expansion of the jurisdiction of the juvenile code to include, in 1948, juveniles who were accused of committing a crime punishable by life imprisonment, and in 1960, juveniles accused of committing a crime punishable by death. Prior to these changes juveniles of whatever age who were accused of crimes punishable either by death or life imprisonment, or later just death, were automatically excluded from the jurisdiction of the delinquency code, and "automatically transferred" into the adult criminal system. Since 1960 then, Massachusetts has had no provisions for the automatic transfer of any juvenile, regardless of what offense he or she has been accused of committing.

A third development was the institution of safeguards against double jeopardy as well as other limitations on the transfer of juveniles for criminal prosecution. These changes were instituted in 1975 and apparently in response to the Supreme Court's decision in Breed v. Jones, 421 U.S. 519 (1975). The Court had held in Breed that the double jeopardy clause of the Fifth and Fourteenth Amendments prohibits the criminal trial of a juvenile after he has been tried and adjudicated in delinquency proceedings. Since jeopardy normally attaches when the first witness has been sworn (or in the case of jury trials, when the jury is empaneled and sworn), transfer hearings must, as a practical matter, be heard before the beginning of any adjudicatory delinquency hearing. This requirement is reflected in the 1975 amendment to Ch. 119, s. 61. The amendment required that henceforth transfer hearings must be held before any hearing on the merits, and additionally, that the court make a determination of probable cause before transferring any juvenile for criminal prosecution. The amendment also instituted safeguards against inappropriate transfer in the form of a series of written findings that must be made before transfer can be effectuated. Necessary findings

required to be made by the court included (1) that the juvenile either had been previously committed to the Department of Youth Services as a delinquent child or that the alleged offense involved the infliction or threat of serious bodily harm, and (2) that the juvenile presents a significant danger to the public and that he is not amenable to rehabilitation as a juvenile. The second of these two sets of findings had to be based upon "clear and convincing" evidence.

A fourth development was the reorganization of the juvenile court system concurrent with the 1978 reorganization of the Massachusetts trial court system. The 1978 reorganization divided the Massachusetts trial court system into seven "departments," two of which were the juvenile court department and the district court department. "Court," for the purposes of the juvenile code, was subsequently redefined as "a division of the juvenile court department or the district court department [except those particular district courts which were excluded from having juvenile jurisdiction]." In reference to changes in the juvenile court structure, it should be mentioned that the Worcester and Springfield juvenile courts were added by statute in 1969, and that the Bristol County juvenile court was added in 1972. The juvenile court department, as enacted in 1978, therefore consisted of the four juvenile courts of Boston, Worcester, Springfield, and Bristol County.

A fifth development between 1948 and the present was the changeover of the Youth Service Board to the Division of Youth Service in 1952, and to the Department of Youth Services in 1969. The 1952 changeover was largely cosmetic. The 1969 changeover, however, was substantial, and it was effectuated by the enactment of Chapter 18A ["Department of Youth Services"] as part of Title II ["Executive and Administrative Offices of the Commonwealth"] of the Massachusetts General Laws. Prior to the enactment the organization of the old Youth Service Board and Division of Youth Services was not clearly articulated in legislative enactments. Provisions regarding the Division and the Board were lumped in with other material relative to the Massachusetts training schools in Chapter 120. Chapter 18A, by contrast, outlined the organization of the Department, dividing it into four bureaus and providing it with a Commissioner, a Deputy Commissioner, four Assistant Commissioners, and an Advisory Committee. In effect the Department was given a much more substantial organization and increased status.

Finally, one development not reflected in the juvenile code, but sufficiently significant to deserve mention here, is the closing between 1969 and 1972 of all the Massachusetts training schools by the reformist Jerome Miller, first Commissioner of the Department, and their replacement with a network of community based programs and facilities.

THE GENERAL STATUTES OF 1860

The General Statutes of 1860 codified two somewhat distinct bodies of substantive law. The first, codified as Chapter 76, was based on the enactments of St. 1847, c. 165, regarding the State Reform School for Boys. The second, codified as Chapter 75, was based on the enactments of St. 1855, c. 442, regarding the State Industrial School for Girls. While Chapters 75 and 76 have many parallel provisions, there were apparently enough substantive differences to justify their appearing as separate chapters, in the opinion of the commissioners who compiled the 1860 revision and codifications.

Chapter 75

Chapter 75 is organized somewhat haphazardly, with sections 1 through 5 dealing primarily with the administration of the industrial school, sections 15 through 20 dealing primarily with the indenture of girls, and the remaining sections dealing with issues of complaint, examination, trial, commitment, and other miscellaneous issues.

Essential Provisions of Chapter 75

1. TRIBUNALS THAT CAN HEAR CASES

Judges of probate and specially appointed commissioners are authorized to hear cases against girls (Ch. 75, s. 5). These commissioners are appointed by the Governor with the advice of the Council, and at the request of the mayor and aldermen, selectmen, or overseers of the poor of any city or town. Each commissioner is assigned to the city or town so requesting (Ch. 75, s. 5). A girl can also be brought before a trial justice or court of criminal jurisdiction. If the justice or court is of the opinion that, if found guilty, the girl would be a proper subject for the Industrial School, the case can be transferred to a commissioner or probate judge, who then hears the case as if it had been brought before him on an original complaint (Ch. 75, s. 9). The statute is silent as to what happens to girls who are not proper subjects for the industrial school. Presumably they may be tried as criminals.

2. JURISDICTION

Jurisdiction is over girls between the ages of seven and sixteen who have been brought in on one of two kinds of complaints: (1) a complaint alleging that the girl has committed an offense punishable by a fine or by imprisonment other than imprisonment for life; or (2) a complaint alleging that "she is leading an idle, vagrant, or vicious life, or has been found in any street, highway, or public place, in circumstances of want and suffering, or of neglect, exposure, or abandonment, or of beggary." The statute is silent as to what happens to girls who commit an offense that is punishable by life imprisonment or death. (Ch. 75, s. 6).

3. MECHANICS OF EXAMINATION, TRIAL, COMMITMENT

If a girl is brought in on a complaint as provided by section 6 (supra), then the judge or commissioner must issue a summons to the father, if he is living and resident in the place where she was found. Otherwise, the summons is issued to the mother, also if she is living and resident in the place where the girl was found. If there is no mother or father who qualifies then the summons goes to the guardian, if there is any, and if he is resident where the girl was found, and if there is no guardian it goes to the person with whom, according to her own statements, the girl resides. If there is no such person, then the judge or commissioner may appoint a suitable person to act on her behalf. Whoever appears on the summons is required to

show cause, if there is any, as to why the girl should not be committed to the Industrial School (Ch. 75, s. 6).

At the time of the hearing the judge or commissioner examines the girl and any party appearing on the summons, and takes such testimony in relation to the case as may be produced. If the allegations are proved, and it appears that the girl is a suitable subject for the Industrial School, and that "her moral welfare and the good of society require that she be sent thereto for instruction, employment, or reformation," the judge or commissioner then commit her to the school on a warrant of commitment, the contents of which are spelled out with particularity (Ch. 75, s. 7). No variance in the form of the warrant is material if it appears sufficiently on the face of the warrant that the girl is being committed by the judge or commissioner within the exercise of his powers. The warrant is executed by a constable or police officer in the place where the case is heard. Accompanying the warrant the judge or commissioner must transmit a statement reciting the substance of the complaint and of the testimony given (Ch. 75, s. 7).

A summons to appear before a judge or commissioner (as required by section 6) must be served by a constable or police officer by delivering it personally to the party to whom it is addressed, or by leaving it with some person of sufficient age at the place of residence or business of such party. The constable or magistrate must make return to the court of the time and manner of the service (Ch. 75, s. 8).

4. SECOND COMMITMENTS

If a girl previously committed to the Industrial School is brought up on a new complaint, as provided by section 6, the judge or commissioner may examine the case and issue a warrant for commitment without having issued the summons otherwise required by section 6 (Ch. 75, s. 10).

5. APPEAL

A girl ordered committed to the Industrial School may appeal the order in the same manner as is provided for appeals from trial justices. The case is entered, tried, and determined in the court to which the appeal is made (Ch. 75, s. 12).

6. TERM OF DETENTION

Any girl committed to the Industrial School is kept, disciplined, instructed, employed, and governed under the direction of the trustees until one of three things happens: (1) she is "bound out," (2) she arrives at age eighteen, or (3) she is otherwise legally discharged (Ch. 75, s. 13). The trustees may discharge, and return to her parents, guardian, or protector, any girl who in their judgment ought for any cause to be removed from the school. If the trustees order such a discharge they must make a record of the discharge with a statement of the reasons for it, a copy of which must be transmitted to the judge or commissioner who originally committed the girl (Ch. 75, s. 14).

7. INSTRUCTION & REHABILITATION

Girls committed to the industrial school are to be instructed in the following things: (1) in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity; (2) in some regular course of labor, either mechanical, manufacturing, or horticultural, or a combination of these, and especially in such domestic and household labor and duties as are best suited to their age, strength, disposition, and capacity; and (3) in such other arts, trades, and employments as may seem best adapted to secure their reformation, amendment, and future benefit (Ch. 75, s. 20).

8. INDENTURE

The trustees may bind out as an apprentice or servant any girl committed to the Industrial School for a term not longer than until she arrives at the age of eighteen. The master to whom the girl is bound is required to report back to the trustees at least once every six months, and provide them with information on her conduct and behavior, whether she is still living under his care, and if not, where she is living. The trustees, the master or mistress, and the girl bound out shall have all the respective rights, priveleges, and duties as if the binding out were made by the overseers of the poor (Ch. 75, s. 15).

In binding out girls the trustees must have scrupulous regard for the religious and moral character of those to whom the girls are bound out, so "that they may secure to the girls the benefit of good example and wholesome instruction, and the best means of improvement in virtue and knowledge, and the opportunity of becoming intelligent, moral, useful, and happy women" (Ch. 75, s. 20).

If a master is guilty either of cruelty and misusage towards a girl or of any violations of the terms of the indenture, the girl or the trustees may make complaint to a commissioner or probate judge, who must hold a hearing on the complaint. If the complaint appears to be well founded then the commissioner or judge may discharge the girl from all obligations of future service and restore her to the school to be managed as before her indenture (Ch. 75, s. 17).

A master receiving an apprentice may not assign or transfer the indenture of apprenticeship, or let out her services for any period without the written consent of the trustees. If the master desires to be relieved from the contract for any cause the contract may be cancelled at the discretion of the trustees. If cancelled, the trustees resume the charge and management of the girl (Ch. 75, s. 16).

Upon the death of the master the indenture may be assigned to another person by the executor or administrator of the master's estate, as long as the assignment is consented to by the girl in writing and approved of by the trustees. The assignment transfers to the assignee all the rights and responsibilities of the original master (Ch. 75, s. 18).

9. DUTIES OF SUPERINTENDENT

The superintendent of the Industrial School has the general charge and custody of the girls. He is a constant resident at the school, and (under the direction of the trustees) is responsible for disciplining, governing, instructing, and employing the girls, and for using his best endeavors to reform them "in such manner as shall, while preserving their health and promoting the proper development of their physical system, secure the formation as far as possible of moral, religious, and industrious habits, and regular thorough progress and improvement in their studies, trades, and employments" (Ch. 75, s. 21). The superintendent must also keep a register containing the following things: the name and age of each girl, the circumstances connected with her history at the time of her admission to the school, and any other facts that may come to his knowledge relating to her history while at the institution and after leaving it (Ch. 75, s. 22).

10. MISCELLANEOUS PROVISIONS

The fees and compensation allowed to judges and commissioners hearing cases under this chapter are the same as those allowed to trial justices. Officers serving process under this chapter are allowed the same fees as for serving process in criminal proceedings (Ch. 75, s. 11).

The city or town in which a girl sentenced to the Industrial School has her legal settlement must, upon notice and demand by the treasurer of the school, pay 50¢ a week for the support of the girl while she remains at the school. The city or town may recover any sum paid out from the parent, kindred, or guardian liable to maintain the girl (Ch. 75, s. 24).

One or more of the trustees must visit the Industrial School at least once in every two weeks, at which times the girls must be examined in the school rooms and workshops, and the register must be inspected. A record of these visits must be kept in the books of the superintendent. Once in every three months a majority of the trustees must examine the school in all its departments, and make a report to the board. On or before October 15th of each year an abstract of these quarterly reports must be prepared and, together with other information as specified by the statute, be laid before the Governor and Council for the information of the General Court (Ch. 75, s. 25).

Chapter 76

Unlike Chapter 75, Chapter 76 is divided into several categories and subcategories. Sections 1 through 11 deal with the State Reform School at Westborough, sections 12 through 16 deal with the Nautical Branch of the State Reform School, sections 17 through 26 deal with commitments, section 27 deals with confinement and discharge, section 28 deals with the transfer of inmates, and section 29 deals with support by cities and towns.

From an organizational point of view the most obvious differences between Chapters 76 and 75 is that Chapter 76 has separate provisions for the different branches of the State Reform Schools for Boys, and that Chapter 75 has more detailed provisions on the indenture of girls. There are a number of provisions in Chapters 76 and 75 which, although they contain some substantive differences, are parallel in terms of structure and subject matter.

PARALLEL PROVISIONS OF CHAPTERS 76 AND 75

1. Ch. 76, s. 17 & Ch. 75, s. 6, ON PROCEEDINGS FOR COMMITMENT. These two sections are identical in their substance, except for the following differences:
- while girls may be brought before judges of the probate court and commissioners, boys may be brought before judges of the probate court and superior courts;
- the jurisdictional limit for boys is that they must be under sixteen, while girls of between seven and sixteen can be brought before a juvenile tribunal;
- while a boy may be brought in only for an offense which is not punishable by imprisonment for life, a girl may also be brought in for leading an idle, vicious or vagrant life, or for being found in any street, highway, or public place in circumstances of want, suffering, neglect, exposure, abandonment, or beggary.

2. Ch. 76, s. 18 & Ch. 75, s. 7, ON EXAMINATION, TRIAL, COMMITMENT, AND THE FORM OF THE WARRANT. These two sections are basically identical, except for the following differences:
- a girl can be committed by a judge or commissioner, while a boy can be committed only by a judge;
- where a boy will be committed depends on his age; if below fourteen, the boy may be committed either to the State Reform School or to the Nautical Branch, at the discretion of the judge, while if above fourteen, the boy can be committed only to the Nautical Branch. All girls are committed to the State Industrial School, regardless of age;
- the last two sentences of Ch. 75, s. 7, have been incorporated as the first sentence of Ch. 76, s. 20, and the last sentence of Ch. 76, s. 19, respectively.

3. Ch. 76, s. 20 & Ch. 75, s. 8, ON THE SERVICE OF A SUMMONS OR WARRANT. These two sections are identical, except that a boy is served a warrant to appear before a judge while a girl is served a summons to appear before a judge or commissioner. Also, the warrant must be attested. Finally, the first sentence of Ch. 76, s. 20 has been carried over from Ch. 75, s. 7. Notice that these identical sentences are used to reflect different ideas however: in the case of Ch. 75, s. 7, the reference is to a warrant of commitment, while in Ch. 76, s. 20 the reference is to a warrant to appear before a judge.

4. Ch. 76, s. 22 & Ch. 75, s. 10, ON SECOND COMMITMENTS. These two sections are very similar. In both cases second commitments can be made without issuing the summonses to the father, mother, guardian, etc., as required by Ch. 76, s. 17 and Ch. 75, s. 6 respectively. Only the actual wording of these two sections is somewhat different.

5. Ch. 76, s. 24 & Ch. 75, s. 12, ON APPEALS. These two sections are very similar, except that boys may appeal both from a sentence of commitment and from a criminal conviction whereas girls may appeal only from a sentence of commitment, and that in the case of boys the appeal is to the superior court in the manner of appeals from justices of the peace in criminal cases, whereas in the case of girls the appeal is in the manner allowed for appeals from trial justices.

6. Ch. 76, s. 5 & Ch. 75, s. 20, ON INSTRUCTION AND DISCIPLINE BY TRUSTEES. These two sections are essentially identical except for the following differences:
- boys may also be schooled in agriculture as part of their "regular course of labor";
- girls are schooled in domestic and household labor and duties, whereas boys are not;
- the last sentence of Ch. 75, s. 20 on the binding out of girls is repeated essentially verbatim in Ch. 76, s. 6, but it is ommitted from s. 5.

7. Ch. 76, s. 6 & Ch. 75, s. 15, ON BINDING OUT. These two sections are very similar, but contain the following differences:
- boys may be bound out until they turn twenty-one, while girls may be bound out only until they turn eighteen;
- there is a provision in Ch. 75, s. 15, that the master report back to the trustees on the conduct and whereabouts of girls bound out, which has no parallel in Ch. 76, s. 6;
- the last sentence of Ch. 76, s. 6, is lifted almost verbatim from Ch. 75, s. 20. The only difference between these two sentences is that girls are to be given the opportunity of becoming "intelligent, moral, useful, and happy women," while boys are to be given the opportunity of becoming "intelligent, moral, useful, and happy citizens."

8. Ch. 76, s. 7 & Ch. 75, s. 25, ON REPORTS BY TRUSTEES. These two sections are identical in content. Only the wording is somewhat different.

9. Ch. 76, s. 21 & Ch. 75, s. 9, ON TRANSFER FROM CRIMINAL COURTS. These two sections are very similar in effect. Both sections provide essentially that if a boy or girl qualifying for juvenile jurisdiction is brought before a court of criminal jurisdiction, and the criminal court determines that if the boy or girl were found guilty they would be a suitable subject for one of the reform schools, then original jurisdiction may be transferred to those judges and commissioners who are empowered to hear juvenile cases. The differences in these two sections are as follows:
- a boy may be transferred out of criminal court only if he has been charged with an offense not punishable by life imprisonment, whereas a girl may be transferred when she has been charged with an offense "which may be punished by fine or imprisonment";
- in the case of boys, the criminal court must give notice of the proceedings to the mayor of the city or one of the selectmen of the town where the boy resided at the time of his arrest. There is no parallel provision for girls.

10. Ch. 76, s. 27 & Ch. 75, s. 13, ON TERM OF COMMITMENT. These two are the most dissimilar of the parallel provisions of Chapters 76 and 75. Both sections state that a boy or girl committed to one of the reform schools will be kept, disciplined instructed, employed, and governed under the direction of the trustees until they are bound out, arrive at a certain age, or are otherwise legally discharged. In the case of girls the age for discharge is eighteen; for boys it is twenty-one. Boys may also be discharged as reformed, or for being sent on a voyage at sea. Ch. 76, s. 27, states that discharge of a boy as reformed, for being sent to a voyage at sea, and for arriving at the age of twenty-one, shall be a complete release from all penalties and disabilities created by the sentence. Ch. 75 has no comparable provisions for girls.

11. Ch. 76, s. 29 & Ch. 75, s. 24, ON SUPPORT OF INMATES BY CITIES AND TOWNS. These two sections are substantially similar, but do have the following differences:
- a girl must be supported at 50¢ per week by the city or town where she has her legal settlement, while a boy must be supported by the city or town in which he is arrested. However, the city or town in which the boy was arrested may seek to recover from the city or town in which the boy has his legal settlement;
- Ch. 76, s. 29, specifies that the payments must be made quarterly on the first days of January, April, July and October, whereas Ch. 75, s. 24, provides that payments be made on notice and demand.

PROVISIONS WHICH ARE UNIQUE TO CHAPTER 76

1. Ch. 76, s. 12, ON THE NAUTICAL BRANCH OF THE STATE REFORM SCHOOL. This section provides essentially that the Nautical Branch shall have separate trustees and officers from those of the State Reform School, and that the provisions governing the State Reform School also govern the Nautical Branch, except as otherwise provided. Ch. 76, s. 13 & 14 deal respectively with the appointment and tenure of trustees, and that the Nautical Branch shall be a corporation.

2. Ch. 76, s. 15, ON THE SCHOOL SHIP. This section provides in essence that the trustees of the Nautical Branch have control of the school ship and other vessels procured for the institution, and that the boys in the branch must be instructed in navigation and the duties of seamen. The trustees may contract to send a boy on a voyage at sea, and such a voyage operates as a discharge of the boy from the institution.

3. Ch. 76, s. 16, ON THE SUPERINTENDENT AS MASTER OF THE SCHOOL SHIP. This section provides that the superintendent of the Nautical Branch is the master of the school ship, and that he may navigate the ship upon any ports and waters of the Commonwealth.

4. Ch. 76, s. 19, ON THE CERTIFICATION OF RESIDENCE AND AGE. This section provides essentially that the judge must certify in his warrant of commitment the residence and age of the boy, as best as can be ascertained. The second sentence of the section, on the transmission of information to the superintendent, is quite similar in wording and effect to the last sentence of Ch. 75, s. 9.

5. Ch. 76, s. 23, ON THE CRIMINAL TRIAL OF BOYS IN POLICE OR SUPERIOR COURT. This section provides that if a judge is of the opinion that a boy brought before him is guilty of an offense and that he is not a fit subject for either branch of the reform school, then, if the offense charged is one within the jurisdiction of police courts he may sentence the boy to such punishment as is provided by law; otherwise, he may bind the boy over to appear in front of the superior court of the same county.

It appears that this section restricts itself to trial justices and police courts, and excludes, for example, judges of the probate court. This is not explicit however.

6. Ch. 76, s. 26, ON THE SENTENCING OF BOYS IN THE SUPERIOR AND SUPREME JUDICIAL COURTS. This section provides that when a boy under age sixteen is convicted in the Supreme Judicial or a Superior Court of any offense not punishable by life imprisonment, the court may sentence him, if below fourteen to the State Reform School or the Nautical Branch, and if fourteen and above then to the Nautical Branch only. In either case the court may also sentence him to whatever punishment is provided by law. Before passing sentence the court must notify the mayor of the city or one of the town selectmen of the place where the boy resides.

7. Ch. 76, s. 28, ON THE TRANSFER OF INMATES. This section provides that the superintendents of the State Reform School and the Nautical Branch may transfer inmates between institutions when consented to by the trustees of both branches, or at the direction of the governor. However, no boy who was an inmate at either school on November 26, 1859, can be transferred without consent.

PROVISIONS WHICH ARE UNIQUE TO CHAPTER 75

1. Ch. 75, s. 14, ON DISCHARGE OF GIRLS. This section provides in essence that the trustees may discharge and return to her parents, guardian, or protector any girl who ought for any cause to be removed from the school.

2. Ch. 75, s. 17-19, ON INDENTURE. These three sections add specific provisions to the issue of indenture which are not addressed in any form by Chapter 76. They provide in essence that an indenture may be cancelled if the master is guilty of cruelty to or misusage of a girl (s. 17), that an indenture may be assigned upon the death of the master as long as approved by the trustees and consented to by the girl (s. 18), and that the trustees remain guardians of the girls while they are bound out (s. 20).

3. Ch. 75, s. 9, ON TRANSFER OF GIRLS HELD FOR CRIMINAL OFFENSES. This section provides in essence that when a girl is brought before a trial justice or court of criminal jurisdiction, and the court or justice is of the opinion that, if found guilty of the crime charged, she would be a suitable subject for the State Industrial School, the girl will be transferred to a judge of probate or a commissioner authorized to commit girls to that school, and the judge of probate or commissioner shall thereupon have the same power as if she had been brought before him on an original complaint.

Provisions of Chapters 143 and 174 of the General Statutes

Chapters 143 and 174 of the General Statutes each have a provision which was subsequently incorporated into the body of the juvenile code, and which in any case are relevant to the law of juvenile offenders. They are:

- Ch. 143, s. 18, which provides in essence that if a boy under the age of sixteen is convicted of an offense which is punishable by imprisonment in the state prison, and such boy has never been sentenced to confinement in any other state prison in the United States, then if a sentence of solitary confinement and hard labor for a term not exceeding three years is imposed on the boy the sentence is to be served in a house of correction or a county jail, but not in the state prison. The same is true for girls of any age who have had a sentence of hard labor imposed on them for any term at all. The foregoing does not prevent the courts in the city of Boston from sentencing such convicts to confinement in any place where juvenile convicts may be by law confined.
- Ch. 174, s. 15, which provides that nothing in the General Statutes shall prevent the court from sentencing juvenile convicts to confinement in any place in which they may be by law confined.

Significant Features of Chapters 75 and 76

Some of the significant features of the juvenile code as it existed in Chapters 75 and 76 of the General Statutes of 1860 include:
- that the proceedings even against juveniles were essentially criminal in nature;
- that for crimes punishable by life imprisonment or by death any child could be tried as an adult. (Notice that the code never explicitly states that crimes punishable by death are taken out of juvenile jurisdiction. However, that concept is implicit in the code, and was made explicit by the time of the publication of the Public Statutes of 1882. See e.g. P.S. Ch. 89, s. 18.);
- that there were no apparent due process requirements in regard to the examination, trial, and commitment of juvenile offenders;
- that indentured servitude was one of the prominent features of this code, and one of the primary rehabilitory tools used under it;
- that the Nautical Branch of the State Reform School was used for the reformation of older male juvenile offenders; and,
- that the whole of the code is permeated with vague moral and religious overtones.

Summary of Differences Between Chapters 75 and 76

Differences between Chapters 75 and 76 include:
- that Chapter 76 imposed no jurisdictional minimum age limit on the trial of young male juvenile offenders, whereas the minimum age for girls, by comparison, was seven;
- that male and female juvenile offenders were generally brought before a different set of courts. The distinction may have been directed at trying female juvenile offenders under less threatening or intimidating circumstances;
- that girls could be brought in under complaint of leading an idle, vagrant, or vicious lifestyles, or for being found in public in some ill-defined state of apparent neglect, whereas boys could not be so brought in;
- that boys could be sentenced to one of two schools, the State Reform School or the Nautical Branch, depending on age, whereas girls could only be sentenced to the State Industrial School;
- that girls were to be summoned on a complaint, whereas boys were to be brought in on a warrant;
- that the code emphasized that boys acquire nautical skills while emphasizing that girls acquire domestic skills; and,
- that boys could be kept committed until age twenty-one, whereas girls could be committed only until age eighteen.

THE PUBLIC STATUTES OF 1882

The Public Statutes of 1882 took the material on the reform schools and juvenile offenders found in both Chapters 75 and 76 of the General Statutes of 1860 and combined it in one chapter, Chapter 89, entitled "Of the State Primary and Reform Schools, and the Visitation and Reformation of Juvenile Offenders." The Chapter was organized into three parts: the first part comprised sections 1 and 2 and dealt with trustees, superintendents, and other officers; the second part comprised sections 3 through 7 on the state primary schools; and the third part comprised sections 8 through 57 on the industrial and reform schools, and juvenile offenders.

Essential Provisions of Chapter 89

1. WHO MAY HEAR CASES

The rules for who may hear cases depend on gender and on location. In Suffolk County both boys and girls may have their cases heard and may be committed by municipal courts, police courts, and trial justices; in counties other than Suffolk both boys and girls may have their cases heard and may be committed by police courts, district courts, trial justices, and judges of the probate courts. Girls, in counties other than Suffolk, may also be tried and committed by specially appointed commissioners (Ch. 89, s. 15).

Except in Suffolk County, where judges of probate do not hear juvenile cases, the judge of a probate court in one county may act for the judge of a probate court in any other county, when so requested (Ch. 89, s. 16).

Except in Suffolk County, where commissioners do not hear cases against girls, commissioners are appointed at the request of the mayor, an alderman, a selectman, or the overseers of the poor of any city or town, by the Governor with the advice and consent of the Council, and in the same manner as for appointing justices of the peace. Commissioners must reside in the city or town where they hear cases (Ch. 89, s. 17).

Police, district, and municipal courts must try juvenile offenders separate from the trial of other criminal cases, the cases of which are to be called the sessions for juvenile offenders, and for which a separate docket and record must be kept (Ch. 89, s. 19).

2. JURISDICTION

Jurisdiction is over any boy or girl between the ages of seven and seventeen who has been charged with an offense not punishable by death or life imprisonment (Ch. 89, s. 18). For offenses which are punishable by death or life imprisonment, jurisdiction is, by implication, in the ordinary criminal courts.

Girls may also be brought before a court for leading an idle, vagrant, or vicious life, or for having been found in any street, highway or public place in circumstances of want, suffering, neglect, exposure, abandonment, or beggary (Ch. 89, s. 25).

3. PROCEEDINGS

When a complaint is made against a boy or girl between seven and seventeen for one of the specified offenses, the court or magistrate before whom the complaint is brought must examine the complainant and any witnesses under oath, reduce the complaint to writing, cause it to be subscribed by the complainant, and issue a warrant which

(1) recites the substance of the complaint, (2) requires that the person accused be brought before the court, and (3) requires that any witnesses be summoned to the proceeding (Ch. 89, s. 18).

When the girl or boy is brought before the court or magistrate the court must issue a summons to the father, the mother, or the lawful guardian, all if living and resident in the place where the girl or boy was found, or to the person with whom the boy or girl claim to reside, in that order. If there is no such person the court may appoint some suitable person to act on behalf of the boy or girl. In any case, the person summoned must appear and show cause why the girl or boy should not be committed to one of the reform schools. The court must give written notice of the pendency of the complaint to the State Board of Health, Lunacy, and Charity; which has the opportunity to investigate the case, attend the trial and protect the interests of the child, or otherwise provide for the child. In the case of complaints against boys, the mayor of the city or a selectman from the town where the boy resides must also be notified of the pendency of the case (Ch. 89, s. 20).

Summonses to parties to appear before a court or magistrate as provided in section 20, unless service thereof is waived in writing in the case of a complaint against a boy, must be by personal delivery to the addressee or by leaving it with a person of sufficient age at the addressee's place of residence or business. The constable or police officer must make immediate return to the court or magistrate of the time and manner of the service (Ch. 89, s. 32).

At the time mentioned in the summons the court or magistrate must examine the boy or girl and any party appearing in answer to the summons, and take such testimony in relation to the case as may be produced. If the allegations are proved, and it appears that the boy or girl is a suitable subject for the reform schools, and that his or her moral welfare and the good of society require that he or she be sent there, then a warrant of commitment is issued. No variance from the prescribed form of the warrant is deemed material if it appears on its face that the boy or girl is being committed by the court or magistrate in the exercise of their powers. The warrant may be executed by any officer qualified to serve civil or criminal process in the county where the case is heard. Accompanying the warrant, the court or magistrate must transmit to the superintendent a statement of the substance of the complaint and the testimony given in the case (Ch. 89, s. 23).

The court or magistrate must certify in the warrant of commitment the place in which the boy resided at the time of his arrest, which certificate is conclusive evidence of his residency for the purposes of this chapter. He must also state the age of the boy as near as can be ascertained, and transmit to the superintendent a statement of such other particulars as come to his knowledge (Ch. 89, s. 24).

All warrants issued by probate judges, trial justices, or commissioners for the commitment of girls only must be returned to the clerk of the superior court (Ch. 89, s. 31).

4. DETENTION AND BAIL

A boy or girl who is arrested on a complaint, as provided by section 20, may be held or committed to jail by the officer having the child in custody until the time of trial, unless the child is admitted to bail as provided by Ch. 212 of the Public Statutes (Ch. 89, s. 21).

5. SECOND COMMITMENTS

If a boy or girl previously committed to any of the reform schools is brought before a court or magistrate on a new complaint, the court or magistrate may examine the case and issue a warrant of recommitment without first issuing the summons to parents, guardian, etc., provided for by section 20 (Ch. 89, s. 26).

6. PROVISIONS ON SENTENCING

If the allegations at the juvenile trial are proved, and the boy or girl is found to be a suitable subject for one of the reform schools, then a warrant of commitment is issued (Ch. 89, s. 23). If, however, a boy or girl is found guilty of the offense charged before a police, district, or municipal court, or a trial justice, and the boy or girl is deemed to be an unfit subject for the Reform or Industrial School, then the boy or girl may be sentenced or bound over to appear before the superior court according to the usual course of criminal proceedings (Ch. 89, s. 27). Presumably any sentence handed out would be such as is otherwise provided for by law.

When a boy is convicted by a probate judge of any offense not punishable by capital or "infamous" punishment, he may be sentenced either to the Reform School, to any other institution established for the reformation of juvenile offenders, or to such other punishment as is provided by law for the offense (Ch. 89, s. 28). The same is true for girls, except that girls may not be sentenced to any other institution established for the reformation of juvenile offenders (Ch. 89, s. 29).

The Supreme Judicial Court and a superior court may also sentence a boy who has been convicted of any offense other than one punishable by life imprisonment to the Reform School, or to such punishment as is otherwise provided by law (Ch. 89, s. 34). Provisions under this chapter regarding the Reform School for Boys extend to commitments made by the courts or magistrates of the United States (Ch. 89, s. 37).

7. APPEAL

A boy or girl committed to the Reform or Industrial School or otherwise sentenced as provided by law may appeal to the superior court. Any such appeal shall be entered, tried, and determined in the same manner as appeals from trial justices in criminal cases (Ch. 89, s. 30).

8. TERM OF DETENTION

All boys and girls committed shall be kept, disciplined, instructed, and governed, until they either (1) arrive at age twenty-one, (2) are bound out, or (3) are otherwise legally transferred or discharged. The discharge of a boy as reformed or for having arrived at the age of twenty-one operates as a complete release from all penalties and disabilities created by the sentence (Ch. 89, s. 35). There is no comparable statement on the discharge of girls.

9. INSTRUCTION

The provisions on instructions are somewhat different for boys than for girls. Boys and girls both are to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity; both boys and girls are to be instructed in some regular course of labor, whether mechanical, manufacturing, or horticultural, but only boys may also be instructed in agriculture and only girls are to be instructed in domestic and household labor and duties; and boys and girls are to be instructed in such other arts, trades, and employments as may seem best adapted to secure their reformation, amendment, and future benefit (Ch. 89, s. 9).

10. CORPORAL PUNISHMENT

Corporal punishment is permitted only in the State Reform School for Boys, and then only under such rules and regulations and by such modes as prescribed by the trustees. Punishment may only be inflicted at the direction of the superintendent or assistant superintendent, and in every case a record of the offense and the punishment must be presented to the trustees at their next regular meeting (Ch. 89, s. 36).

11. INDENTURE

The trustees of either school may bind out as an apprentice or servant any girl under their jurisdiction for a term not longer than until she turns eighteen, or a boy for a term not longer than until he turns twenty-one, and in either case for a lesser term. The trustees, master or mistress, and apprentice or servant shall have the same rights, duties, and priveleges as if the binding out had been made by the overseers of the poor. In binding out boys and girls the trustees must have scrupulous regard for the religious and moral character of those to whom they are to be bound, so that the children may have the benefit of a good example and wholesome instruction, the best means of improvement in virtue and knowledge, and thus the opportunity of becoming intelligent, moral, useful, and happy (Ch. 89, s. 38).

The master to whom a girl is bound must report to the trustees as often as once every six months her conduct and behavior, whether she is still living under his care, and if not, where she is (Ch. 89, s. 39). There is no comparable provision for boys.

When a minor is bound out either by the trustees of the state almshouse, of a state primary school, or of one of the reform schools, then it must be provided in the indenture that if it appears at any time to the trustees or their sucessors that the indenture will be prejudicial to the well being of the apprentice or servant, that the trustees have the right to annul the indenture by giving written notice to the master with a statement of their reasons, and that they may remove the child immediately (Ch. 89, s. 40).

The execution of such a conditional indenture does not operate as a discharge from any sentence or order of commitment. When such indenture is cancelled the trustees resume the same power as before the indenture was made (Ch. 89, s. 41).

A person receiving a girl as an apprentice may not assign or transfer the indenture, nor may he let out her services for any period without first securing the written consent of the trustees. If the master desires to be relieved of the contract the trustees may in their discretion cancel the indenture and resume the charge of the girl (Ch. 89, s. 42). There is no comparable provision for boys.

If a master is guilty of either cruelty or misusage, or of any violation of the terms of the indenture, then the girl or the trustees may file a complaint with a judge, trial justice or commissioner. The complaint will be examined, and if it proves to be well founded the court will discharge the girl from any future service and return her to the school (Ch. 89, s. 43). No comparable section exists for boys.

The indenture of a girl may be assigned upon the death of her master under the following conditions: that the girl acknowledges the transfer and consents to it in writing, and that the trustees approve (Ch. 89, s. 44). No comparable provision exists for boys.

12. DISCHARGE OF GIRLS

The trustees may discharge to her parents, guardian, or protector any girl who ought, for any cause, to be removed from the industrial school. A record of the discharge

must be transmitted to the judge or commissioner who had the girl committed (Ch. 89, s. 45). There is no comparable section for boys.

13. TRANSFER OF GIRLS TO REFORMATORY PRISON

On application of the trustees of the Industrial School, the Commissioner of Prisons may transfer any girl committed to the Industrial School for a crime or misdemeanor to the Reformatory for Women, to be held until the term of the sentence has expired, unless sooner discharged. The Commissioner of Prisons may, on the application of the trustees, transfer the girl back to the Industrial School (Ch. 89, s. 47). There is no comparable provision for boys.

14. PROVISIONS ON TRUSTEES AND SUPERINTENDENTS

The trustees, along with their more general powers and duties (Ch. 89, s. 8), must cause at least one or more of their own to visit each school at least once every two weeks, at which time boys and girls will be examined in the school rooms and workshops, and the registers will be inspected. Once every three months each school must be examined in all its departments by a majority of the trustees, from which a quarterly report must be made, which reports must be filed every October 15th with the Governor and the Council for the information of the legislature (Ch. 89, s. 10).

The superintendent of each school, along with the subordinate officers, has the general charge and custody of the boys and girls. He is a constant resident at the school, and he disciplines, governs, instructs, employs, and uses his best endeavors to reform the inmates in such manner as shall, while preserving their health and promoting their physical development, secure the formation of moral, religious, and industrious habits, and regular trades and employments.

15. PROVISIONS ON OVERSEERS OF THE POOR

When a child having a settlement in the Commonwealth is committed to the State Primary School then the State Board of Health, Lunacy, and Charity, must give written notice to the overseers of the poor in the place where the child resides. The overseers may, with the assent of the State Board, remove the child to the place of settlement. Otherwise the place of settlement must pay $1.00 per week for the support of the child in the school, starting from the time of notice to the overseers of the poor (Ch. 89, s. 49).

Likewise, when a child having a settlement in the Commonwealth is committed to the Industrial or Reform School, the trustees of those schools must give written notice to the overseers of the poor in the settlement where the child resides. The settlement must pay $1.00 from the date of notice for the support of the child, and any sum so paid may be recovered from any parent, kindred, or guardian liable by law to maintain the child (Ch. 89, s. 51).

16. PROVISIONS ON THE STATE PRIMARY SCHOOL

Dependent and neglected children having no settlement in the commonwealth are to be received as pupils in the State Primary School (Ch. 89, s. 4). No child above sixteen may be received or maintained in the Primary School except by a special vote of the State Board of Health, Lunacy, and Charity (Ch. 89, s. 5). For those who are not admitted, the superintendent, trustees, and other officers shall use all diligence to provide suitable places in good families for all those who have received an elementary education. Other pupils may be placed in good families on the condition that their education be provided for by the public schools of the cities and towns where they reside (Ch. 89, s. 5).

Pupils of the Primary School shall be maintained, taught, exercised, and employed as their health and conditions require. But they shall not be designated as paupers (Ch. 89, s. 4).

The trustees may place any of the children of the Primary School in the charge of suitable persons, the power of visitation and final discharge remaining with the State Board. The trustees may provide for the maintenance of the child, in whole or in part, at a cost not to exceed $2.00 per week (Ch. 89, s. 6).

The trustees of the State Primary School may transfer inmates from the Industrial School and Reform School to the Primary School. The inmate transferred shall be held until the sentence expires, unless discharged sooner or remanded. On application of any three trustees of the Primary School, the State Board may return any boy to the Reform School (Ch. 89, s. 7). There is no comparable provision for the return of girls.

17. PROVISIONS ON THE STATE BOARD OF HEALTH, LUNACY, AND CHARITY

The court or magistrate before whom a child is brought on a complaint may, at the request of the State Board, authorize the Board to do any of the following things: (1) take and indenture the child, (2) place the child in the charge of any person, (3) place the child in the State Primary School, or (4) commit the child to the Reform or Industrial School, if the child proves unmanageable. In any case, such placement or commitment may not be for a term longer than until the boy or girl attains age twenty-one, but it may be for a lesser term. The State Board may provide for the maintenance of a child placed or committed in whole or in part, at a cost not to exceed the average cost of the support of children at the State Primary School (Ch. 89, s. 22). The State Board may discharge from custody any child committed to its care under the provisions of section 22 (Ch. 89, s. 50).

The State Board must visit at least once a year all children (1) who are maintained wholly or in part by the state, (2) who have been indentured or placed in the charge of any person by a state institution, board, or officer of the Commonwealth, and (3) all minor children supported at the expense of a city or town. The State Board must inquire into the condition of such children, and make such other investigations regarding the children as it sees fit. For this purpose it may have private interviews with the children at any time (Ch. 89, s. 53).

No child may be indentured, adopted, or placed in the charge of any person from any state institution until two things have happened: (1) notice of an application has been given to the State Board, and (2) the State Board has filed a report in writing with the institution, after making an investigation. Likewise, all applications for release or discharge of indentured children, or those placed in someone's charge, must be given in the same manner to the State Board for its report (Ch. 89, s. 55).

When the State Board is of the opinion that a child indentured or placed in the charge of any person cannot be held any longer with advantage to the child, the State Board may, (1) cancel the indenture or contract by giving written notice, and return the child to the institution from which it was taken; (2) transfer the child to any other institution in the Commonwealth maintained for the support and reformation of children; (3) indenture the child to some other person, or (4) otherwise provide for his or her maintenance during minority, or for a lesser time (Ch. 89, s. 54).

The State Board must seek out suitable persons for the adoption of children who have been arrested for offenses, abandoned, neglected, or committed to a state institution. They must give notice thereof to the institutions, boards, officers, or persons having the authority to dispose of such children (Ch. 89, s. 56).

Provisions of Public Statutes, Chapter 215

Chapter 215, on Judgment and Execution, has two provisions in regard to juveniles which were later incorporated into the juvenile code of the Revised Laws of 1902. These are:
- Ch. 215, s. 17, which amends G.S. (1860) Ch. 174, s. 13, and provides in essence that if a boy under age sixteen years of age is convicted of an offense punishable by confinement in the state prison, and he has never previously been sentenced to a state prison anywhere in the United States, then, if the sentence is for solitary confinement and hard labor for a term not exceeding three years, the sentence is to be executed in a jail, and not the state prison.
- Ch. 215, s. 18, which states that no person under the age of ten may be sentenced to a jail or house of correction, except for non-payment of fine, or fine and costs.

Material of General Statutes Deleted from Public Statutes

Provisions of the General Statutes of 1860 which were not carried over to the Public Statutes of 1882 include the following provisions:
- all the provisions relating to the Nautical Branch of the State Reform School (G.S. Ch. 76, s. 12-16, 28);
- the provisions on transfer of children from courts of criminal jurisdiction to courts of juvenile jurisdiction after a determination of their suitability for one of the state reform schools (G.S. Ch. 75, s. 9, Ch. 76, s. 21); and,
- the provisions on the support by cities and towns of children committed to one of the reform schools, and the liability of kindred (G.S. Ch. 75, s. 24, Ch. 76, s. 29).

New Material Added by the Public Statutes

Material in the Public Statutes of 1882 that has no antecedents in the General Statutes of 1860, includes the following material:
- all the material on the State Primary Schools (Ch. 89, s. 4-7);
- the following material on the mechanics of commitment: Ch. 89, s. 15, on the hearing of juvenile cases by police, district, and municipal courts, and trial justices; s. 16, on judges of probate being authorized to act in any county; s. 18, on the examination of complaints and the issuance of initial warrants; s. 28, on the sentencing of boys by judges of probate; s. 29, on the sentencing of girls by judges of probate; s. 31, on the return of warrants for the commitment of girls; and s. 37, on boys convicted in United States courts;
- the provision that juveniles are to be tried in separate sessions in certain courts (Ch. 89, s. 19);
- the provisions on detention after arrest, including the right to bail (Ch. 89, s. 21);
- the provision regarding corporal punishment being permitted in the Reform School (Ch. 89, s. 36);
- two new provisions on indenture, s. 40 providing for the contract of indenture to contain certain provisions, and s. 41 providing that the execution of indenture does not operate as a discharge from confinement;
- the provision on the transfer of girls from the Industrial School to the Reformatory for Women (Ch. 89, s. 47);
- the provisions regarding the powers and authority of the State Board of Health, Lunacy, and Charity (Ch. 89, s. 22, 50, 53-56);
- the provisions regarding the notice of certain commitments to be given to the overseers of the poor (Ch. 89, s. 49, 51); and,
- two miscellaneous provisions, s. 52, providing for the record of commitments to be returned to the superior court, and s. 57, providing for aid to destitute girls who have graduated from the industrial school.

Material Carried Over From General Statutes to Public Statutes:

Comparative Analysis

INSTRUCTION OF CHILDREN COMMITTED

P.S. 89, s. 9 is basically a combination of G.S. 75, s. 20, and 76, s. 5. The separate provisions as to the instruction of boys and girls, which contained almost identical language in the General Statutes, has essentially been aggregated. No substantive changes have been made. The last half of G.S. 75, s. 20 on the binding out of girls has been included in the provisions of P.S. 89, s. 38, thus placing it with the rest of the material on binding out.

EXAMINATIONS OF SCHOOLS AND CHILDREN BY TRUSTEES

P.S. 89, s. 10 here just basically combines the identical provisions of G.S. 75, s. 25, and 76, s. 7. Only the last sentence of both G.S. 75, s. 25 and 76, s. 7 has been dropped from the version found in P.S. 89, s. 10.

POWERS OF SUPERINTENDENT

P.S. 89, s. 11 again just basically combines the almost identical language of G.S. 75, s. 21 and 76, s. 8. There are no substantive changes in the section.

PROVISIONS ON THE MECHANICS OF COMMITMENT

P.S. 89, s. 17 makes a slight modification of G.S. 75, s. 5. The basic differences are (1) that commissioners will no longer be appointed for Suffolk County, and (2) that the statement on the authority of judges of probate that forms the last sentence of G.S. 75, s. 5 has been deleted from P.S. 89, s. 17.

P.S. 89, s. 20, on proceedings when boys or girls are brought before a judge, is primarily a compilation of G.S. 75, s. 6 and 76, s. 17. P.S. 89, s. 20 does add a few things of its own: (1) the age limit for both boys and girls is now between seven and seventeen. (2) The section now requires that notice of the pendency of the complaint must be given to the State Board of Health, Lunacy, and Charity, which has an opportunity to investigate the case, attend the trial, and protect the interests of the child. This is a significant development in as much as it allows for the first time that the child have some sort of ostensibly impartial advocate in his or her corner for the proceedings.

P.S. 89, s. 23, on examination, trial and commitment, is again just an integration of the parallel provisions of G.S. 75, s. 7 and 76, s. 18 & 19. There are minor differences in language, such as the reference to "such court or magistrate" in the first line of P.S. 89, s. 23, which replaces "such judge or commissioner" and "judge" respectively. Also the last sentence of G.S. 76, s. 19, which was previously included in a section on the judge having to certify age and residency, has now been included in P.S. 89, s. 23. The parallel section of G.S. 75, s. 7, included that sentence all along.

G.S. 76, s. 18 also provided for boys only a commitment option to either the Nautical Branch or the State Reform School. P.S. 89, s. 23 provides for commitment only to the State Reform School.

P.S. 89, s. 24, on the judge's certification of age and residency, is substantively identical to G.S. 75, s. 19, except that P.S. 89, s. 24 requires that the superintendent also transmit a statement of "such other particulars concerning the boy as can be ascertained."

P.S. 89, s. 27, on boys and girls who are unfit subjects for the state reform schools, rewrote the old G.S. 76, s. 23, which used to apply only to boys. The new law applies to both boys and girls. Under the General Statutes of 1860 a judge of the probate court could sentence a boy, who was not a fit subject for the Reform School to criminal punishment only if he was of the opinion that the boy was guilty, and that the offense was within the jurisdiction of a police court. Otherwise the boy had to be bound over to the superior court. Under the Public Statutes of 1882, if a boy or girl is found guilty before a police, district, or municipal court, or a trial justice, such boy or girl can be sentenced or bound over to the superior court, depending on whether the lower courts have jurisdiction over the offense.

P.S. 89, s. 32, on the service of summons, again essentially integrates the parallel provisions of G.S. 75, s. 8 and 76, s. 20. The Public Statutes add the clause, in the second line of s. 32, regarding a written waiver of service in the case of a complaint against a boy. The first line of G.S. 76, s. 20 is also dropped from s. 32 of the Public Statutes, but neither was it found in G.S. 75, s. 8. The other substantive provisions are the same for all three sections.

P.S. 89, s. 34, on boys convicted in the Supreme Judicial Court or superior court, makes only two substantive changes in the provisions of G.S. 76, s. 26. (1) It changes the jurisdiction of boys subject to the section from under sixteen to between seven and seventeen, and (2) it does away with the option of sentencing a boy to the Nautical Branch or the State Reform School.

SECOND COMMITMENTS

P.S. 89, s. 26 simply integrates the parallel provisions of G.S. 75, s. 10 and 76, s. 22. No substantive changes are enacted by the Public Statutes here.

OFFENSE OF GIRLS LEADING IDLE LIVES

P.S. 89, s. 25 combines the material on girls leading idle, vagrant, or vicious lives from G.S. 75, s. 6 with the provision from G.S. 75, s. 7, providing for commitment to the Industrial School in case the allegations of an offense are proved. Substantively the Public Statutes add nothing new here.

TERM OF DETENTION

P.S. 89, s. 35 integrates the provisions of G.S. 75, s. 13 and 76, s. 27, and makes a few substantive changes. These are: (1) that girls will not be automatically discharged until they arrive at the age of twenty-one whereas under the General Statutes they were to be discharged when they arrived at the age of eighteen; (2) that juveniles committed to the Reform School can escape from their custody by being "legally transferred," which was not true under the General Statutes; and (3) that boys no longer receive a complete release from their sentence upon being sent on a voyage at sea.

APPEAL ALLOWED

P.S. 89, s. 30 basically amends the appeal provisions for girls as defined by G.S. 75, s. 12 to become the same as those provided for boys in G.S. 76, s. 24. Now girls may also appeal to the superior court. The one new provision added by the Public Statutes is that appeals will not be taken in the manner provided for appeals from trial justices in criminal cases, as opposed to appeals from justices of the peace in criminal cases.

MATERIALS ON INDENTURE

P.S. 89, s. 38, on the binding out of girls and boys, basically integrates G.S. 75, s. 15 and 76, s. 6. Girls may still be bound out until they arrive at age eighteen, and boys may still be bound out until they arrive at age twenty-one. The rights, duties, and priveleges of the parties involved is still the same as if it had been made by the overseers of the poor. The structure of P.S. 89, s. 38 is identical to the structure of G.S. 76, s. 6, although some of the language has been changed. P.S. 89, s. 38 omits the passage on the reporting requirements of the master found in G.S. 75, s. 15, which was also omitted from G.S. 76, s. 6, and includes the passage on the moral character of those to whom the child is bound out, found in G.S. Ch. 75, s. 20 (but not in Ch. 75, s. 15) and also included in G.S. Ch. 76, s. 6 (see discussion of these sections in the material on the General Statutes).

P.S. 89, s. 39, on the indenture of girls to contain certain provisions, lifts the provisions on the reporting requirements of the master almost verbatim out of G.S. 75, s. 15. This passage was not included in P.S. 89, s. 38, on the binding out of girls and boys (see discussion, supra).

P.S. 89, s. 42, on the indenture of apprenticeship of girls not to be assigned, repeats G.S. 75, s. 16 almost verbatim. There are no substantive changes in the section.

P.S. 89, s. 43, on the discharge of a girl when the master is guilty of cruelty, repeats G.S. 75, s. 17 almost verbatim. The only substantive change is that now trial justices may also hear complaints against the master, whereas before only judges and commissioners could hear such complaints.

P.S. 89, s. 44, on the assignment of indenture upon the death of the master, repeats verbatim the provisions of G.S. 75, s. 18.

P.S. 89, s. 45, on the power of trustees to discharge girls, repeats verbatim the provisions of G.S. 75, s. 14.

P.S. 89, s. 46, on the trustees acting as guardians of girls bound out or discharged before age twenty-one, repeats the entirety of G.S. 75, s. 19 verbatim, but then adds the last sentence on the trustees being guardians for girls who were discharged before the age of twenty-one.

PROVISIONS ON SENTENCING OF CHILDREN TO JAIL

P.S. Ch. 215, s. 17, on when a boy can be sentenced to jail instead of state prison, amends G.S. Ch. 174, s. 18, to omit the following provisions: (1) the provisions as to girls sentenced to solitary confinement and hard labor, which were present in G.S. 174, s. 18, have been eliminated from P.S. 215, s. 17; and (2) the last passage of the earlier section, exempting courts in the city of Boston from provisions of this section, has also been eliminated.

Summary Comments on the Public Statutes of 1882

The Public Statutes of 1882 contributed a good deal of new material to the law of juvenile offenders, and changed some significant things from its predecessor code, Chapters 75 and 76 of the General Statutes of 1860.

The most obvious change between 1860 and 1882, although it is not substantive, is that the Commissioners entrusted with recodifying the laws of Massachusetts decided to integrate the separate provisions of Chapters 75 and 76 into one new chapter. Their probable motivation was that these two chapters really dealt with the same subject

matter, since they had numerous parallel provisions that were divided only by their gender-specificity.

Two of the other big changes provided for by the Public Statutes of 1882 have to do with which tribunals could hear cases as to juvenile offenders, and what age group of juveniles was subject to juvenile jurisdiction. Under the General Statutes of 1860, girls could be tried and committed only before judges of the probate court or specially appointed commissioners; boys could be tried and committed by judges of the probate or superior court. In both cases juveniles could initially be brought before courts of criminal jurisdiction, but unless the juvenile was charged with a very serious offense or was for some other reason deemed to be an unsuitable subject for the Reform School, transfer for the actual juvenile hearing had to be made from courts of criminal jurisdiction to those courts empowered to hear juvenile cases. Under the Public Statutes, by contrast, courts of criminal jurisdiction have the power to hear juvenile cases themselves. They must simply do so in separate sessions, entitled the sessions for juvenile offenders.

The other significant change contained in the Public Statutes is that the age limitation for juvenile offenders was made the same for boys and girls, and it was upped to include children between the ages of seven and seventeen. Under the General Statutes, only boys under the age of sixteen and girls between the ages of seven and seventeen were subject to juvenile jurisdiction.

The term of detention was also changed for girls. Previously it had been until the girl turned eighteen. Under the Public Statutes, as had been true for boys before in any case, the term of detention became until the girl turned twenty-one. Interestingly enough, the Public Statutes in Ch. 89, s. 38, still provided that girls could be bound out only until they turned eighteen. There is therefore some internal conflict in the provisions on the term of detention for girls.

The Public Statutes also added a number of substantive provisions to the law of juvenile offenders. For one thing, the Public Statutes added an enactment regarding the formal procedures of bringing a complaint against a juvenile, much of which has been carried over to the present day (compare P.S. (1882) Ch. 89, s. 18 with G.L. (1985) Ch. 119, s. 54). The Public Statutes also added a provision on pre-trial detention and the right to bail, a provision allowing for corporal punishment in the Reform School, and a provision on the transfer of girls committed to the Industrial School to the Reformatory for Women. Most significantly, the Public Statutes added a number of provisions regarding the State Board of Health, Lunacy and Charity, and on the State Primary School. The State Board, a precursor to the Department of Public Welfare, seems to have functioned very much in the capacity of providing for and protecting the interests of children. Officials of the State Board could show up at juvenile sessions and advocate on behalf of the accused juvenile. More generally the State Board could request that a child appearing before a juvenile session be entrusted into its custody, regardless of whether the child was found guilty of anything, to be placed as the State Board saw fit.

The State Primary School appears to have been a non-criminal alternative for abandoned or neglected children who had no settlement in the Commonwealth. Quite possibly the Primary School functioned mostly to provide shelter and an education for young runaways.

Some of the substantive material of the General Statutes of 1860 that was not changed by the Public Statutes of 1882 includes the numerous provisions on indenture (particularly the indenture of girls), and the continued characterization of the sessions for juvenile offenders as criminal in nature.

The two most significant things that were completely eliminated by the Public Statutes were (1) the provisions as to the Nautical Branch of the State Reform School, which had been dismantled during the intervening time period, and (2) the provisions on the support of committed children by cities and towns.

THE REVISED LAWS OF 1902

The Revised Laws of 1902 carried over an enormous amount of material from the Public Statutes of 1882, without making many substantive additions, deletions, or amendments. For this reason, instead of setting out the provisions of the Revised Law in detail, the focus here will be on the specific differences between the codes of 1882 and 1902.

Material of the Public Statutes Deleted from the Revised Laws

1. All of the sections regarding the State Primary School (P.S. 89, s. 4-7).
2. The provision on the transfer of girls committed to the Industrial School to the Reformatory for Women (P.S. 89, s. 47).
3. The provisions regarding notice to the overseers of the poor (P.S. 89, s. 49, 51).

Material Added by the Revised Laws

1. A provision on the revision of sentence of boys over fifteen (R.S. 86, s. 11). This section provides essentially that if within 20 days of the commitment of a boy to the Lyman School (formerly the Reform School) the trustees have reason to believe that the boy was older than fifteen at the time of commitment, they may apply to the committing court for a revision of sentence. If the court finds the allegation correct, it shall impose such sentence as should have been imposed.

2. A provision on disposition in default of bail of a child under twelve (R.S. 86, s. 19). This section provides that a child under twelve who is held for examination or trial, if unable to furnish bail, must be committed to the State Board of Charity (sucessor to the State Board of Health, Lunacy, and Charity), which must provide for the child's safekeeping and appearance at examination or trial.

3. A provision on release on probation (R.S. 86, s. 36). The section provides, in essence, that the trustees of the Lyman and Industrial Schools may, with or without indenture, and after having given proper notice to the State Board of Charity as required by section 50 of this chapter, release a child on probation and place the child with his or her own family, or in any situation or family which has been investigated and approved by the trustees.

4. A provision on transfers to the Hospital Cottages (R.S. 86, s. 46). This section provides in essence that the Board of Insanity may, at the request of the trustees of the Lyman School or the Industrial School, transfer to the Hospital Cottages for Children or to the Massachusetts School for the Feeble-minded any child whose condition would be benefitted by such transfer. A physician has to certify that such child would be a suitable subject for treatment at either of the named institutions.

5. A provision on transfers to the State Hospital (R.S. 86, s. 49). This section provides in essence that the State Board of Charity may send to the State Hospital any juvenile offender in its custody, or at the request of the trustees of the Lyman and Industrial schools, any juvenile offender in their custody who is in need of hospital treatment. A juvenile so transferred will be in the exclusive custody of the trustees and superintendent of the hospital, and shall be subject to its regulations. When the juvenile has sufficiently recovered the hospital will give written notice to the State Board of Charity, which will have the juvenile returned to their custody, or that of the Lyman or Industrial schools.

Material Carried Over from the Public Statutes to the Revised Laws

TRIBUNALS THAT CAN MAKE COMMITMENTS

R.L. 86, s. 10, on tribunals that can make commitments, changes some of the language of P.S. 89, s. 15, and makes two substantive changes: (1) it sets a maximum age for the commitment of boys to the Lyman School as being under fifteen, and (2) it sets a maximum age for the commitment of girls to the Industrial School as being under seventeen. The other substantive provisions of P.S. 89, s. 15 remain as they were: both boys and girls can still be committed by police, district, and municipal courts, and trial justices. In counties other than Suffolk both boys and girls can be committed by judges or probate, and girls can be committed by specially appointed commissioners.

R.L. 86, s. 12, on judges of probate acting in any county except Suffolk, changes a few words of P.S. 89, s. 16, but is otherwise identical in language and substance.

R.L. 86, s. 13, on the appointment of special commissioners to hear complaints against girls, repeats almost verbatim the provisions of P.S. 89, s. 17.

JURISDICTION

Juvenile jurisdiction under the Revised Laws is the same as it was under the Public Statutes: any boy or girl between the ages of seven and seventeen who is charged with an offense not punishable by death or life imprisonment is subject to juvenile jurisdiction (compare R.L. 86, s. 14, with P.S. 89, s. 18).

PROCEEDINGS FOR TRIAL AND COMMITMENT

R.L. 86, s. 14, on warrants to apprehend boys and girls, repeats almost verbatim the provisions of P.S. 89, s. 18, and makes no substantive changes. The section still provides that on complaint against any boy or girl between the ages of seven and seventeen for an offense not punishable by death or life imprisonment, the court or magistrate is to examine the complainant and the witnesses under oath, reduce the complaint to writing and have it subscribed by the complainant, and issue a warrant for the person accused and a summons for all witnesses named in the complaint requiring them to appear and give evidence.

R.L. 86, s. 30, on the service of summons, incorporates the same essential substantive provisions as P.S. 89, s. 32, although the language has been modified. Service, unless waived in writing, is made by a constable or police officer by delivering it personally to the addressee, or by leaving it with some person of sufficient age at the place of residence or business of the addressee. The constable or police officer must make immediate return to the court or magistrate of the time and manner of service. The only change here between the Revised Laws and the Public Statutes is that the Public Statutes provided for written waiver of service only in the case of complaints against boys.

R.L. 86, s. 17, on proceedings before judges, repeats substantially the provisions of P.S. 89, s. 20, but does make some changes. The section still requires that when a boy or girl is brought before the court on a complaint, a summons issues to the father, mother, legal guardian, or person with whom the child claims to reside, for all of them to come in and show cause why the child should not be committed. However, the Revised Laws does make the following changes: (1) it substitutes a reference to the "Lyman School" for the "Reform School"; (2) it eliminates the provisions requiring that notice of the pendency of the complaint be given to the city mayor or a town selectman of the place where the boy resides; and (3) it expands the language on the material regarding

notice to the State Board of Charity. Thus, if the court is of the opinion that the accused child, if found guilty, should be sent to a public institution or committed to the custody of the State Board, the court must give notice of the complaint to the Board in writing or by other means, allowing the Board to investigate the case, attend the trial to protect the interests of the child, or otherwise provide for the child.

R.L. 86, s. 22, on examination, trial, and commitment, repeats the provisions of P.S. 89, s. 23, with only two minor changes: (1) a reference to the "Lyman School" has been substituted for the "Reform School"; and (2) the statement accompanying the warrant of commitment must now include "such other particulars relative to the boy or girl committed as can be ascertained". This last provision is lifted almost verbatim from P.S. 89, s. 24, on judges to certify the residence and age of a boy. The difference is that now judges must transmit "such other particulars" for both boys and girls, instead of just for boys alone. Aside from these changes the new section still provides that at the hearing the court will take such testimony relative to the case as may be produced. If the allegations are proved and it appears that the child should be sent to the Lyman or Industrial schools because the child's moral welfare and the good of society require it, then a warrant of commitment issues, variance from which prescribed form shall not be considered material if it appears sufficiently on the face of it that the child is being committed in the proper exercise of the courts powers, etc.

R.L. 86, s. 23, on the certification of residency and age of a boy or girl, changes the provisions of P.S. 89, s. 24 to apply to both girls and boys, and eliminates the final passage of the old section on the transmission of "such other particulars" which has since been incorporated into R.L. 86, s. 22.

R.L. 86, s. 29, on the return of warrants for the commitment of girls, changes some of the language but none of the substance of P.S. 89, s. 31.

R.L. 86, s. 35, on this chapter being applicable to boys and girls convicted in United States courts, changes P.S. 89, s. 37 to the degree that it makes its provisions applicable to both boys and girls, instead of to boys only.

R.L. 86, s. 48, on records of commitment to be returned to the superior court, repeats, with slight modifications in language, the provisions of P.S. 89, s. 52. The only difference is that in the old section the record had to be transmitted to the superior court "for criminal business." That passage is deleted in the new section.

PROVISIONS ON SENTENCING

R.L. 86, s. 22 is discussed supra under "Proceedings for Trial and Commitment."

R.L. 86, s. 26, on the sentencing of boys and girls found unfit for the reform schools, substitutes a reference to the "Lyman School" for a reference to the "Reform School" in P.S. 89, s. 27. The substantive provisions remain unchanged, and they still provide that if the child is found guilty before a police, municipal or district court, or trial justice, and is considered to be an unfit subject for one of the reform schools, then the child will be bound over to the superior court according to the usual course of criminal proceedings.

R.L. 86, s. 27, on sentencing by judges of probate, basically combines the parallel provisions of P.S. 89, s. 28 (for boys) and P.S. 89, s. 29 (for girls), and makes only the following substantive changes: boys may now be sentenced to the Lyman School only if they are under fifteen, and girls may now be sentenced to the Industrial School only if they are under seventeen. Otherwise the new section makes no substantive changes in the two old laws.

R.L. 86, s. 32, on the sentencing of boys convicted in the superior court to the Lyman School, amends P.S. 89, s. 34 as follows: (1) it eliminates any reference to boys being sentenced by the Supreme Judicial Court, and (2) it changes the age jurisdiction from "between seven and seventeen" to "between seven and fifteen." Otherwise the section still provides that if a boy is convicted in superior court of an offense which is punishable by imprisonment other than imprisonment for life, he may be sentenced to the Lyman School or to such other punishment as is provided for by law. Notice that there is no parallel provision on the commitment of girls convicted in superior court.

TERM OF DETENTION

R.L. 86, s. 33, on the term of detention, repeats almost verbatim the provisions of P.S. 89, s. 35, except that "Lyman School" is substituted for "Reform School." Boys and girls both are still to be kept until they either arrive at age twenty-one, are bound out, or are otherwise legally transferred or discharged. The discharge of a boy either as reformed or as attaining the age of twenty-one operates as a complete release from all penalties and disabilities created by the sentence. There is still no parallel provision for girls under the Revised Laws, as was true for the Public Statutes.

INSTRUCTION OF BOYS AND GIRLS COMMITTED

R.L. 86, s. 4, repeats verbatim the provisions of P.S. 89, s. 9. Boys and girls are still to be instructed in piety and morality, in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor. For the boys this would be mechanical, manufacturing, agricultural or horticultural; for the girls it would be mechanical, manufacturing, horticultural, and especially domestic and household labor and duties. Both boys and girls are also to be instructed in such other arts, trades, and employments as may seem best adapted to secure their reformation, amendment, and future benefit.

EXAMINATION OF SCHOOLS BY TRUSTEES

R.L. 86, s. 5, on the examination of schools, records, and reports made by the trustees, repeats the provisions of P.S. 89, s. 10 almost verbatim. The section makes minor changes in the requirements of the quarterly reports.

POWERS AND DUTIES OF SUPERINTENDENTS

R.L. 86, s. 6 repeats almost verbatim the provisions of P.S. 89, s. 11. The superintendent, among other things, is still required to use his best endeavors to reform the inmates in such manner as shall, while preserving their health and promoting their proper physical development, secure the formation of moral, religious, and industrious habits, and of regular and thorough progress and improvements in their studies, trades, and employments.

SEPARATE TRIAL OF JUVENILE OFFENDER

R.L. 86, s. 16, on the separate trial of juvenile offenders in special juvenile sessions of the police, district, and municipal courts, repeats almost verbatim the provisions of P.S. 89, s. 19.

DETENTION BEFORE TRIAL AND THE RIGHT TO BAIL

R.L. 86, s.18, on pretrial detention and admitting to bail, makes one substantive change in the provisions of P.S. 89, s. 21. Under the new section, only a child of twelve or older may be held or committed to jail unless admitted to bail. Under the old section any child subject to juvenile jurisdiction (i.e., between seven and seven-

teen and having been charged with a certain class of offenses) could be held or committed to jail, unless subject to bail. Children under twelve who are unable to furnish bail must, under the new provisions, be committed to the custody of the State Board of Charity (see discussion of R.L. 86, s. 19, supra).

COMMITMENT TO JAIL OF YOUNGER CHILDREN LIMITED

R.L. 86, s. 20, is a significant departure from its predecessor provisions, which were contained in both the Public Statutes of 1882 and the General Statutes of 1860 not with the material on juvenile offenders, but in the chapter on judgment and execution. G.S. (1860), Ch. 174, s. 15, provided that nothing in the General Statutes could prevent a court from sentencing juvenile convicts in any place where they could be by law confined. Apparently, this included jail. P.S. (1882), Ch. 215, s. 18, modified this rule by providing that no person under the age of ten years could be sentenced to a jail or house of correction except for the non-payment of a fine, or of a fine and costs. R.L. Ch. 86, s. 20 changed this rule significantly by providing that a child under the age of twelve could not be committed to a jail or house of correction, to the state farm, or to the house of correction at Deer Island if in default of bail, or for the non-payment of a fine, or upon conviction of any offense not punishable by death or life imprisonment. Consequently, R.L. 86, c. 20, provides in essence that children under twelve can only be committed to jail, a house of correction, or the state farm for committing an offense punishable by death or by life imprisonment.

COMMITMENT OF VAGRANT GIRLS

R.L. 86, s. 24, on the commitment of vagrant girls, provides for the same substantive things as P.S. 89, s. 25, its predecessor section. Some of the language, however, has been changed. The section still provides in essence that a girl found leading an idle, vagrant or vicious life, or one found in any street, highway, or public place in circumstances of want, suffering, neglect, exposure, abandonment, or beggary, may be subjected to a juvenile complaint and to potential commitment in the Industrial School, as provided for by other sections of this chapter.

APPEAL ALLOWED

R.L. 86, s. 28, on appeal, provides for the same things as its predecessor section, P.S. 89, s. 30, except that it substitutes a reference to the "Lyman School" for a reference to the "Reform School." Thus, a child who is ordered committed to the Lyman or Industrial School or who is otherwise sentenced as provided by law, may appeal to the superior court, where the appeal will be entered, tried, and determined in the same manner as appeals from trial justices in criminal cases.

CORPORAL PUNISHMENT

R.L. 86, s. 34, repeats almost verbatim the language of P.S. 89, s. 36, except that it substitutes a reference to the "Lyman School" for a reference to the "Reform School." Corporal punishment can still be administered at the Lyman School under rules and regulations prescribed by the trustees, and at the direction of the superintendent or the assistant superintendent of the school. In every case, a record of the offense and the mode of punishment must be presented to the trustees at their next meeting.

MATERIALS ON INDENTURE

R.L. 86, s. 37, on the binding out of boys and girls as servants or apprentices, repeats almost verbatim the provisions of P.S. 89, s. 38. The new section omits the portion of the fifth line of the old section regarding the parties having "all the rights and priveleges" as if the binding out were made by the overseers of the poor.

The section still provides that a girl may be bound out as a servant or apprentice until she reaches age eighteen, a boy may be bound out until he reaches twenty-one, and that the parties to the contract shall be subject to the same provisions as if the binding out had been made by the overseers of the poor. The trustees must have scrupuplous regard of the religious and moral character of those to whom the children are to be bound.

R.L. 86, s. 39, on the terms of indenture to contain certain conditions and limitations, repeats the essential provisions of P.S. 89, s. 40, but does make the following change: instead of concerning itself with indentures made by the trustees of the State Almshouse, the Primary School, and both reform schools, the new section concerns itself with indentures made by the trustees of the State Hospital, the Lyman School, and the Industrial School. Thus, if a minor is bound out by the trustees of any of these institutions, the indenture shall provide that if at any time it appears to the trustees that the continuance of the indenture will be prejudicial to the well-being of the child, the trustees may cancel the indenture by giving written notice to the master, including therewith a statement of their reasons, and then place the child back into the custody of the trustees.

R.L. 86, s. 40, on the execution of the indenture not operating as a discharge, repeats almost verbatim the provisions of P.S. 89, s. 41. The section still provides in essence that the execution of a conditional indenture (as provided by R.L. 86, s. 39, supra) does not operate as a discharge of the sentence or the order of commitment.

R.L. 86, s. 41, on the indenture of girls not to be assigned, repeats almost verbatim the provisions of P.S. 89, s. 42. The section still provides in essence that the indenture is not to be assigned nor the girls services to be let out for any period without the written consent of the trustees, and if the master desires to be relieved from the contract for any reason the trustees may cancel it at their discretion.

R.L. 86, s. 42, on the discharge of a girl when the master is guilty of cruelty, repeats almost exactly the provisions of P.S. 89, s. 43. The only difference is that the new section allows that the girl or trustees may also file a complaint with a "court," instead of only with a judge, trial justice, or commissioner.

R.L. 86, s. 43, on the assignment of the indenture upon the death of the master, repeats almost verbatim the provisions of P.S. 89, s. 44.

DISCHARGE

R.L. 86, s. 44, on the early discharge of boys and girls, changes some of the provisions of P.S. 89, s. 45. The old section provided that the trustees could discharge and return to her parents, guardian, or protector any girl who ought for any cause to be removed from the school. Notice of the discharge had to be provided to the judge or commissioner who had the girl committed. The new section adds a provision regarding the early discharge of boys, which provides that the trustees may discharge and return to his parents, guardian, or protector, any boy who, in their judgment is physically and mentally unfit to remain at the school.

MATERIALS ON STATE BOARD OF CHARITY

R.L. 86, s. 50, on the responsibility of the State Board of Charity to visit indentured and other children, changes the language of P.S. 89, s. 53, without changing any of the substantive provisions. The State Board is still required to visit, at least once a year, all children who are either maintained wholly or in part by the Commonwealth, or who have been indentured or placed in charge of a person by any state institution, board, or officer of the Commonwealth.

R.L. 86, s. 51, on the power of the State Board to cancel indentures and transfer children, changes some of the language and only one of the substantive provisions of P.S. 89, s. 54: the old provision that no minor supported at the expense of a city or town may be removed therefrom without the consent of the overseers of the poor has been deleted from the new section.

R.L. 86, s. 52, on the right of the State Board to be notified before a child is indentured repeats almost verbatim the provisions of P.S. 89, s. 55. There are no substantive changes.

R.L. 86, s. 53, on the power of the State Board to procure the adoption of children, repeats verbatim the provisions of P.S. 89, s. 56.

AID TO DESTITUTE GIRLS

R.L. 86, s. 54, repeats very closely the language of P.S. 89, s. 57, and makes no substantive changes. The trustees of the Industrial School may still pay out as much as $200 annually in aiding destitute and deserving girls who have left the school and are out of work.

Summary Comments on the Revised Laws of 1902

The Revised Laws of 1902 carried over most of the material of the Public Statutes of 1882 in substantially unchanged form. The changes that were made fall primarily into two categories: (1) changes enacted to enhance the welfare and safety of children, especially younger children, and (2) changes that made provisions formerly applicable to either only boys or only girls applicable to both.

In the category of changes made to enhance the welfare and safety of children, the Revised Laws did the following: (1) they set a maximum age for the commitment of boys to the Lyman School at fifteen, and a maximum age for the commitment of girls to the Industrial School at seventeen, and they provided that boys committed to the Lyman School who turned out to be over fifteen would have their sentences revised; (2) they provided that only children who were twelve or older could be held in a jail unless admitted to bail; children under twelve who were not admitted to bail had to be committed to the custody of the State Board of Charity; (3) they provided that no child under twelve could be committed to a jail, house of correction, or state farm upon conviction for a crime unless the crime committed was punishable by death or life imprisonment, and (4) they deleted a provision allowing for the transfer, in certain cases, of girls committed to the Industrial School to the Reformatory for Women. Significantly, the Revised Laws did not change the age limit of juvenile jurisdiction in general. Juveniles between the ages of seven and seventeen who are charged with an offense not punishable by death or life imprisonment were still subject to juvenile jurisdiction.

Two largely cosmetic changes that were reflected in the Revised Laws are (1) the changing of the name of the Reform School to the Lyman School, and (2) the break-up of the State Board of Health, Lunacy, and Charity into separate boards, with the sucessor board for the purposes of the juvenile code being the State Board of Charity.

The most significant deletion made by the Revised Laws is that all the material on the State Primary School has been deleted, with no obvious effort made to compensate for those deletions. Two other noteworthy deletions involve the provisions on notice to the overseers of the poor, and a provision regarding notice of the pendency of cases to cities and towns.

The remainder of the code remained substantially unchanged between 1882 and 1902. Provisions carried over included those on who can hear cases, on juvenile jurisdiction, on the instruction of children committed, on the powers and duties of trustees and superintendents, on indenture, on the State Board of Charity, and some miscellaneous provisions such as those on the commitment of vagrant girls and aid to destitute girls.

THE GENERAL LAWS OF 1921

The enactment of the General Laws of 1921 was the last comprehensive recodification and revision of the general statutes undertaken by the Commonwealth. Since then the effort has been made to fit all new amendments and enactments into the framework of the General Laws of 1921. These General Laws of 1921 did however reorganize significantly the body of law on juvenile offenders. Laws regarding juvenile offenders, heretofore contained in one chapter (Chapter 89 of the Public Statutes of 1882, Chapter 86, of the Revised Laws of 1902) were organized into two separate chapters. Provisions regarding proceedings against juveniles were placed in Chapter 119, along with provisions on the care and protection of juveniles. Laws regarding the Massachusetts training schools were placed separately in Chapter 120 of the General Laws.

The other significant thing about the General Laws of 1921 is that the body of law on proceedings against juveniles had been changed radically by the enactments of St. 1906, c. 413. While it did repeal all provisions contrary to its own enactment, St. 1906, c. 413 left standing numerous provisions on the mechanics of commitment and on the care and training of juvenile offenders. It was not a comprehensive revision of the juvenile code in toto, therefore, but only of those sections of the code dealing with proceedings against juveniles.

As organized by the commissioners entrusted with the recodification of the General Laws of 1921, the material on juvenile offenders was set forth as follows:

- Ch. 119, s. 52-64: provisions on delinquent children.
- Ch. 119, s. 65-72: provisions common to all proceedings against juveniles.
- Ch. 119, s. 73-83: provisions on criminal proceedings.
- Ch. 120, s. 1-26: provisions on the Massachusetts training schools.

Material of the Revised Laws Deleted from the General Laws of 1921

1. All of the provisions regarding the indenture of juvenile offenders (R.L. 86, s. 37-43).
2. All of the provisions regarding the State Board of Charity (R.L. 86, s. 49-53).
3. The provision on the commitment of vagrant girls (R.L. 86, s. 24).
4. The provision on the appointment of commissioners to hear complaints against girls (R.L. 86, s. 13).
5. The provision that judges of probate may act in any county except Suffolk County (R.L. 86, s. 12).
6. The provision that records of commitments be returned to superior court (R.L. 86, s. 48).
7. The provision on aid to destitute girls (R.L. 86, s. 54).

Material Added by the General Laws of 1921

1. A definitional section (G.L. 119, s. 52), which defined "court," "delinquent child," "probation officer," and "wayward child." Of significance: courts that now had the power to hear juvenile cases were the Boston Juvenile Court or any district court (except the municipal court for the city of Boston). Police courts, trial justices, judges of probate, and specially appointed commissioners were thus excluded from hearing original complaints against juveniles (except in cases of offenses punishable by death or life imprisonment). Municipal courts still had the power to hear complaints against juveniles, since they were apparently subsumed in the definition of district court.

   Also, the definition of "delinquent child" provided that a child was delinquent if between the ages of seven and seventeen and if the child violated any city

ordinance or town by-law, or committed any offense not punishable by death or life imprisonment. This definition did little to change the substance of juvenile jurisdiction; the only difference between this definition and the substantive provisions of R.L. 86, s. 14, is that violations of a city ordinance or town by-law now also subjected a child to the juvenile jurisdiction of the courts.

The definition of "wayward child" in 1921, seems to have been a watered-down version of the old section on the commitment of vagrant girls (see R.L. 86, s. 24). One difference is that the provisions as to wayward children applied to both boys and girls equally.

2. A section stating that delinquency proceedings are not criminal, and that the delinquency code should be liberally construed so that the care, custody, and discipline of the children brought before the court should approximate that which they would receive from their parents (G.L. 119, s. 53). This section is of critical importance since it for the first time decriminalizes the law of juvenile offenders.

3. A section providing for the adjournment of cases and for appeal to separate juvenile sessions of the superior court (G.L. 119, s. 56). Previously, appeals to the superior court were not in sessions separate from the other business of the court.

4. A section providing for investigations by probation officers (G.L. 119, s. 57). The probation officer is assigned by the court to make an investigation of the child's character, home surroundings, school record, and previous delinquency record, if any, and to attend the trial and furnish the court with whatever information and assistance it may require.

5. A section dealing with the consequences of a child's violating his or her conditions of probation (G.L. 119, s. 59). If the child violates his or her conditions, the probation officer may arrest the child without a warrant, and the court may make any disposition of the case which it could have made before imposing probation.

   The court may also impose a fine not exceeding $5.00, and if it is not immediately paid in whole or in part, commit the child to jail for a period not exceeding five days, or until the fine is paid.

6. A section stating that the disposition of or evidence from a delinquency proceeding may not be used in any subsequent proceeding except a criminal or delinquency proceeding against the same child (G.L. 119, s. 60).

7. A section providing for the dismissal of delinquency proceedings in certain instances, and allowing for the bringing of a criminal complaint (G.L. 119, s. 61).

8. A section providing that a child adjudged delinquent may be required to pay restitution in cases involving civil liability on the part of the juvenile (G.L. 119, s. 62).

9. A section making it criminal for parents or a guardian to aid the delinquency or waywardness of a child under their custody or control (G.L. 119, s. 63).

10. A section dealing with the powers of the Commissioner of Probation (G.L. 119, s. 64).

11. A section providing that the superintendents and teachers of the public and private schools of Massachusetts must furnish information about any pupil brought before the court at the court's request (G.L. 119, s. 68).

12. A section providing that an officer in possession of a warrant to arrest a child, or an officer who makes a warrantless arrest, may agree to accept the written promise of the parent, guardian, or another reputable person, to present the child at time of trial (G.L. 119, s. 69).

13. Two sections on the summoning of parents or guardians, providing (1) that at any time during the pendency of a case the court may summon the parent, guardian, or person with whom the child resides, and (2) that if the person to whom the summons is issued fails to appear, the court can issue a capias to compel attendance (G.L. 119, s. 70, 71).

14. A section providing generally that courts may continue to exercise juvenile jurisdiction over children who turn seventeen before the final disposition of their case, but that juvenile courts have, with limited exceptions, no authority over juveniles who have turned eighteen (G.L. 119, s. 72).

15. A section providing that a boy or girl who has escaped from the Lyman or Industrial Schools respectively, or who has broken his or her conditions of parole after release from one of these schools, may be arrested without a warrant and detained until he or she can be returned to the proper school (G.L. 120, s. 12).

16. A section providing for the transfer of boys between the Lyman School, the Industrial School for Boys, and the Suffolk School for Boys (G.L. 120, s. 14).

17. A section providing for the transfer of boys and girls under seventeen who were sentenced to the Massachusetts Reformatory or the Reformatory for Women back to the Industrial Schools for Boys or the Industrial School for Girls, if the trustees or the Commissioner of Correction consent (G.L. 120, s. 15).

18. A section providing that in the case of transfers from a training school to the Massachusetts Reformatory or the Reformatory for Women, legal custody is in the institution to which the transfer has been made.

19. A section stating that whoever aids or assists an inmate of one of the training schools from escaping or attempting to escape may be punished by a fine of not more than $500 or imprisonment for not more than two years (G.L. 120, s. 26).

Material Carried Over From the Revised Laws to the General Laws of 1921

1. Proceedings Against Children Between Seven and Seventeen (G.L. 119, s. 54, R.L. 86, s. 15).

G.L. 119, s. 54, providing for the summoning of a child under fourteen, is substantively very similar to R.L. 86, s. 15, except that the age limit in the Revised Laws was under twelve. At an age of twelve or over in the Revised Laws, and fourteen or over in the General Laws, a child can be brought in on a warrant. Under both the Revised and General Laws, a child to whom a summons has been issued and who has not responded, may subsequently be arrested. Under the General Laws a child of under fourteen may also be arrested if the court has reason to believe that the child will not appear on the summons.

G.L. 119, s. 54, also incorporates some language from R.L. 86, s. 14, although s. 14 is not listed in the margin notes as a predecessor section to 119, s. 54, but is listed instead as a predecessor to 119, s. 75. However, R.L. 86, s. 14 had language very similar to that contained in the first paragraph of 119, s. 54, on the examination of the complainant and any witnesses, and the reduction of the complaint to writing.

2. Summoning of Parent or Guardian (G.L. 119, s. 55, R.L. 86, s. 17, 30).

The first paragraph of 119, s. 55, on the summoning of parents, a legal guardian, or the person with whom the child resides to show cause why the child should not be adjudged wayward or delinquent, is essentially identical in its provisions to 86, s. 17, even though the language has been changed substantially. The biggest difference is that 86, s. 17 required the party appearing on the summons to show cause why the child should not be committed, while 119, s. 55 requires the party to show cause why the child should not be adjudicated delinquent or wayward.

The third paragraph of 119, s. 55, on the service of summons, is substantially similar to the provisions of 86, s. 30. The only real difference is in the actual language.

The fourth paragraph of 119, s. 55, providing for the attendance at any proceedings of an agent of the Department of Public Welfare, is derived from the last sentence of 86, s. 17. The differences are (1) that 119, s. 55 substitutes the Department of Public Welfare for the State Board of Charity, and (2) that 119, s. 55 provides that the court need only be of the opinion that the "interests of the child" require the attendance of an agent of D.P.W. whereas 86, s. 17 provided that the court need be of the opinion that the child, if found guilty, would be sent to a state institution or committed to the State Board of Charity.

The second paragraph of 119, s. 55, on the time fixed for appearance on the summons of the parents coinciding with that of the child, is without precedent under the Revised Laws.

3. Delinquency Adjudication and Proceedings After Adjudication (G.L. 119, s. 58, R.L. 86, s. 27).

The first three paragraphs of 119, s. 58, are essentially without precedent in the Revised Laws. There is some language in the third paragraph of 119, s. 55, on the power of the Department of Public Welfare to place an adjudicated child with any person or to commit such child to a training school (if he or she proves to be unmanageable), which is clearly borrowed from R.L. 86, s. 21. However, s. 21 is not listed as a predecessor section for 119, s. 58 in the margin notes.

The fourth paragraph of 119, s. 58 provides in essence that a child adjudicated delinquent or wayward may be committed to "any institution to which it might be committed upon a conviction of such violation of law, excepting a jail or house of correction' by contrast, 86, s. 27 allows for the commitment of boys under fifteen to the training schools and other boys to any institution established for the reformation of juvenile offenders, for the commitment of girls under seventeen to the Industrial School, or in the case of either boys or girls, such other punishment as is provided by law for the offense. R.L. 86, s. 27, does not preclude the commitment of juvenile offenders to jail.

4. Separate Sessions for Children (G.L. 119, s. 65, R.L. 86, s. 16).

The General Laws here do not so much change as expand the precedent provisions of the Revised Laws. Not only must courts, under the General Laws, designate separate juvenile sessions, but they must also provide for separate rooms for the trial of juvenile offenders.

Minors who do not need to be at the hearing must be excluded, and the general public may be excluded from juvenile hearings, and the court may admit only such persons as have a direct interest in the case.

5. Commitment of Children to House of Detention Pending Trial (G.L. 119, s. 66, R.L. 86, s. 20).

G.L. 119, s. 66 expands on the provisions of R.L. 86, s. 20, incorporating its essential provisions but making certain changes and additions: (1) the age limit for children who are not to be detained in a jail, house of correction, etc., has been upped from "under twelve" to "under fourteen"; (2) the General Laws also include lock ups and police stations as places where younger children are not to be detained, except in certain cases; and (3) the General Laws add a paragraph to 119, s. 66, which provides in essence that for all juveniles under the age of seventeen who are detained in a lockup, police station, or house of detention, the probation officer and at least one of the parents, or the person with whom the child resides, are to be notified of the child's detention.

6. Care of Children Held for Examination (G.L. 119, s. 67, R.L. 86, s. 18, 19).

The first paragraph of 119, s. 67, incorporates the essential provisions of 86, s. 19, but makes the following changes: (1) the cut-off point for those who cannot be committed to jail if unable to furnish bail has been raised to "under fourteen" from "under twelve"; and (2) instead of allowing commitments to the State Board of Charity, children under twelve who are unable to furnish bail are now committed to the Department of Public Welfare or to a probation officer.

The second paragraph of 119, s. 67, is derived from 86, s. 18, but changes the provisions of the latter section substantially. Under the old section a child of twelve or older, if unable to furnish bail, could be committed to jail for the term of the pre-trial detention period. Under the new section, a child of fourteen or older who cannot furnish bail is ordinarily committed to the custody of a probation officer. If the court has reason to believe that the child will not show at the time of trial or examination, then the child may be committed to jail.

The third paragraph of 119, s. 67, on the powers of a probation officer in relation to a child committed to his care, is new.

7. Jurisdiction of Courts in their Criminal Proceedings (G.L. 119, s. 73, R.L. 86, s. 10).

G.L. 119, s. 73, is derived substantially from R.L. 86, s. 10. The differences are primarily that 119, s. 73 (1) adds a provision that boys between fifteen and eighteen may be committed to the Industrial School for Boys, and (2) that it adds several lines at the end of the section on the commitment of boys over seventeen to the Industrial School.

8. Complaint and Warrant for Criminal Proceedings Against Juveniles (G.L. 119, s. 75, R.L. 86, s. 14, 17, 30).

G.L. 119, s. 75, borrows some language from R.L. 86, s. 14 (warrants to apprehend boys and girls), s. 17 (proceedings before judges), and s. 30 (service of summons), but essentially it is an entirely new section. It provides, in essence, that upon complaint against any child between seven and fourteen against whom delinquency proceedings have been begun and dismissed as required by G.L. 119, s. 61, or for any child between fourteen and seventeen who has committed an offense not punishable by death or life imprisonment, the court will (1) examine the complaint and witnesses and reduce the complaint to writing, (2) issue a warrant for the accused, and (3) summons witnesses to appear. This section, functioning in tandem with G.L. 119, s. 61, is a transfer statute, and as such without precedent under the Revised Laws or any other prior Massachusetts juvenile code.

9. Child May Be Put in Charge of Department of Public Welfare (G.L. 119, s. 76, R.L. 86, s. 21).

G.L. 119, s. 76, here repeats substantially the provisions of R.L. 86, s. 21. The primary differences are, (1) that under the General Laws, commitment is to the Department of Public Welfare as the successor to the State Board of Charity, and (2) that an unmanageable boy between the ages of fifteen and eighteen may now also be committed to the Industrial School for Boys. Aside from these changes, D.P.W. may still place a child in charge of "any person," commit a child to a training school if he or she proves unmanageable, provide in whole or in part for a child so placed, and discharge a child from its custody at its discretion. Commitments to D.P.W. are still for a period lasting until the child's twenty-first birthday.

10. Warrant of Commitment to Training Schools (G.L. 119, s. 77, R.L. 86, s. 22).

G.L. 119, s. 77, repeats substantially the provisions of R.L. 86, s. 22. The biggest difference between the two sections is that the actual language of the warrant of commitment has been expanded substantially in the new section. Other than that, 119, s. 77 repeats almost verbatim the provisions of 86, s. 22, except that the last sentence of 119, s. 77, is new, substituting the word "delinquent" for the word "guilty."

11. Certificate of Age and Residence (G.L. 119, s. 78, R.L. 86, s. 23).

G.L. 119, s. 78, repeats almost verbatim the provisions of R.L. 86, s. 23, except that 119, s. 78 requires that the age of the child be specified in years and months.

12. Warrant for Recommitment (G.L. 119, s. 79, R.L. 86, s. 25).

This section repeats substantially the provisions of R.L. 86, s. 25 with the major difference being that re-commitments can now also be made to the Industrial School for Boys.

13. Sentence of a Child Found Not Suitable for Commitment to the Lyman School (G.L. 119, s. 80, R.L. 86, s. 26).

G.L. 119, s. 80 here repeats substantially the provisions of R.L. 86, s. 26. The new section provides in essence that if a child found guilty by a court is considered an unfit subject for commitment to the Lyman or Industrial Schools, he or she may be sentenced or bound over to appear before the superior court in the course of criminal proceedings.

The conjunctive operation of G.L. 119, s. 61, 75, and 80, is an interesting demonstration of the confusion that can result from a recodification of existing laws. Of the three sections, only s. 61 was enacted in substantially the form it is in by St. 1906, c. 413, s. 11. Sections 75 and 80 were apparently pieced together by the Commissioners charged with the revision and recodification of the General Laws of 1921 from existing sections codified as R.L. 86, s. 14, 17, 26, and 30. In reorganizing these sections the Commissioners obtained the following results: 119, s. 61 allowed for the dismissal of delinquency proceedings, and 119, s. 75 allowed for the commencement of criminal proceedings after delinquency proceedings had been dismissed. A child brought up on a criminal complaint under s. 75 would be dealt with by the criminal court "according to law." G.L. 119, s. 80 allows for sentencing of children found guilty (presumably in a s. 75 hearing) or their transfer to the superior court in the usual course of criminal proceedings. The result here is confusion.

These sections do not make clear that the decision whether or not to bind a child over to the superior court is entirely dependent on the jurisdiction of the lower or superior courts over the offense charged.

14. Appeal of Commitment or Sentence (G.L. 119, s. 81, R.L. 86, s. 28).

G.L. 119, s. 81, repeats substantially the provisions of R.L. 86, s. 28, with the only difference being that 119, s. 81 specifies that appeals to the superior court are only of commitments from criminal proceedings, while 86, s. 28 allowed appeals to the superior court from any kind of commitments. G.L. 119, s. 56, allows appeal to the superior court in its juvenile session from delinquency or waywardness adjudications.

15. Warrants for Commitment of Girls to be Returned to Superior Court (G.L. 119, s. 82, R.L. 86, s. 29).

G.L. 119, s. 82, repeats verbatim the provisions of R.L. 86, s. 29, except that the reference to "judges of probate" and "commissioners" has been deleted.

16. Sentencing Power of the Superior Court (G.L. 119, s. 83, R.L. 86, s. 32).

G.L. 119, s. 83, repeats substantially the provisions of R.L. 86, s. 32. The primary differences are (1) that the jurisdiction of this section has been expanded from "between seven and fifteen" to "between seven and eighteen," and (2) that boys between fifteen and eighteen may now be committed to the Industrial School for Boys. The section, as rewritten, provides in essence that a boy between seven and eighteen who is convicted in the superior court of an offense not punishable by imprisonment for life may be sentenced to the Lyman School or the Industrial School for Boys, depending on age, or to such other punishment as is otherwise provided by law. There is no comparable provision for girls under the General Laws of 1921.

17. Instruction of Boys and Girls (G.L. 120, s. 6, R.L. 86, s. 4).

G.L. 120, s. 6, here repeats almost verbatim the provisions of R.L. 86, s. 4, making only minor adjustments in the language. Thus G.L. 120, s. 5 still provides that the trustees are to instruct the boys and girls under their charge in piety and morality, and in the branches of useful knowledge adapted to their age and capacity; in some regular course of labor or trade, either mechanical, manufacturing, agricultural or horticultural for the boys, and mechanical, manufacturing, horticultural, and especially in domestic and household labor and duties for the girls; or a combination of these as may seem best suited to their age, strength, disposition, and capacity; and in such other arts, trades, and employments as may seem best adapted to secure their reformation, amendment, and future benefit.

18. Visits by Trustees (G.L. 120, s. 6, R.L. 86, s. 5).

G.L. 120, s. 6 repeats very substantially the provisions of R.L. 86, s. 5, except that there are differences in the reporting requirements of the trustees following their quadriannual inspection.

19. Powers of Superintendents (G.L. 120, s. 7, R.L. 86, s. 6).

G.L. 120, s. 7, repeats verbatim the provisions of R.L. 86, s. 6.

20. Revision of Sentence in Certain Cases (G.L. 120, s. 11, R.L. 86, s. 11).

G.L. 120, s. 11, repeats substantially the provisions of R.L. 86, s. 11,

with the following differences: instead of confining itself to a revision of sentence in the case of a boy over fifteen committed to the Lyman School, 120, s. 11 also deals with the case of boys over eighteen committed to the Industrial School for Boys and of girls over seventeen committed to the Industrial School for Girls.

21. Term of Detention and Discharge (G.L. 120, s. 13, R.L. 86, s. 33).

G.L. 120, s. 13 expands on the provisions of R.L. 86, s. 33. The term of detention under 120, s. 13, is still ordinarily until the child turns twenty-one. Children are still to be kept in the custody of the training schools until they turn twenty-one, or are legally transferred or discharged. Under 120, s. 13 children may also be paroled, whereas under 86, s. 33, children could be bound out. G.L. 120, s. 13 also changes the provisions on "complete release": whereas under 86, s. 33 the discharge of a boy as reformed, or upon attaining age twenty-one operated as a complete release from all penalties and disabilities created by the sentence, under 120, s. 13, the trustees may grant an honorable discharge to any person, whether a boy or girl, who in their opinion is deserving thereof. An honorable discharge or the attainment of age twenty-one operates as a complete release from all penalties and disabilities incurred in consequence of commitment.

22. Transfers to the Massachusetts Reformatory (G.L. 120, s. 16, R.L. 84, s. 9).

G.L. 120, s. 16, expands on R.L. 84, s. 9, which was part of the chapter on the State Board of Charity, and not of Chapter 86 on the training schools and the reformation of juvenile offenders. R.L. 84, s. 9 provided in essence that on the application of the trustees of the Lyman School or the Industrial School for Girls, the State Board of Charity could transfer an incorrigible or unfit inmate to the State Farm, to be held until the sentence of the term expired, or until transferred back at the discretion of the State Board. G.L. 120, s. 16 provides in essence that the trustees of the training schools themselves could transfer an unmanageable or improper person to the Massachusetts Reformatory or to the Reformatory for Women. Moreover, on application of the trustees of the training schools, the Commissioner of Correction could also transfer incorrigible or unfit inmates of the training schools to the State Farm, to be held there until the term of their sentence expires, unless the Commissioner of Correction, in his discretion, chose to transfer the inmate back.

23. Transfer to Hospital Cottages (G.L. 120, s. 18, R.L. 86, s. 46).

G.L. 120, s. 18, repeats substantially the provisions of R.L. 86, s. 46. The primary difference is that under 120, s. 18 it is the Commissioner of Mental Diseases instead of the State Board of Insanity who transfers children at the request of the trustees of one of the training schools.

24. Corporal Punishment in the Lyman School (G.L. 120, s. 19, R.L. 86, s. 34).

G.L. 120, s. 19 repeats verbatim the provisions of R.L. 86, s. 34, and then adds a final sentence to the section. That sentence provides that no punishment will be inflicted until twenty-four hours after it has been authorized, and that no inmate may be subjected to corporal punishment more than once in one day. Notice that there is no parallel provision on corporal punishment in the Industrial School for Boys.

25. Discharge of Boy or Girl (G.L. 120, s. 20, R.L. 86, s. 44).

G.L. 120, s. 20, repeats almost verbatim the provisions of R.L. 86, s. 44, making no substantive changes in the law. A boy may still be discharged from the

Lyman School and the Industrial School for Boys because he is physically or mentally unfit to remain there, and a girl can still be discharged from the Industrial School for Girls when, in the opinion of the trustees, there is any cause for her discharge. Both boys and girls are discharged to their parents, guardian, or protector.

26. Parole and the Placing of Children (G.L. 120, s. 21, R.L. 86, s. 36).

G.L. 120, s. 21, expands on and changes some of the provisions of R.L. 86, s. 36. The changes in 120, s. 21 include (1) the use of the term "parole" instead of "probation"; (2) that the Department of Public Welfare receives notice of all children placed, instead of the now-defunct State Board of Charity; and (3) that the trustees of the various training schools are to place children with families of the same religious belief as the children, but if this proves impracticable, then due regard shall be had to the locality and to the children's opportunity to attend religious worship of their own belief. In general the trustees of the training schools may still place children on parole in the custody of their usual homes or in any situation or family which has been investigated and approved by the trustee

27. The Trustees May Be Guardians of Children (G.L. 120, s. 22, R.L. 86, s. 45).

G.L. 120, s. 22 changes substantially the provisions of R.L. 86, s. 45. The latter section provided that the trustees would be the guardians of every girl bound out and held for service, and that they would take care that the terms of the contract were faithfully fulfilled and that the girl was properly treated. The trustees could also be the guardians for any girl under twenty-one who was discharged and who had no parents or guardian. By contrast, G.L. 120, s. 22 provides that the trustees may act as guardians for any girl or boy in their charge who is under twenty-one and who has neither parents nor a guardian. If a guardian is appointed, the powers of the trustees in this regard shall cease.

28. There are a number of sections in G.L. 120 that were carried over from the Revised Laws and other predecessor juvenile codes, which are not discussed here because they concern themselves with the administration of the training schools or other subjects not relevant to the juvenile code per se. Sections of G.L. 120 which were carried over from the Revised Laws, and which are not otherwise discussed include s. 1 (trustees may hold trust funds), s. 2 (trustees have charge of all industrial schools), s. 3 (superintendent and physician for each school), s. 4 (rules and regulations, etc.), s. 8 (bond and accounts of superintendent), s. 9 (Rogers fund), s. 10 (contracts by superintendents; suits), s. 24 (gifts to trustees), and s. 25 (children committed by United States courts).

Summary Comments on the General Laws of 1921

The General Laws of 1921 are a curious and not entirely congruent mixture of old and new provisions. The new provisions were provided primarily through the enactment of St. 1906, c. 413, and as reorganized by the Commissioners entrusted with the revision and codification of the General Laws, they are to be found primarily in Ch. 119, s. 52-67, and s. 74. The old provisions were carried over from previous enactments, most of which appear in slightly altered form in the Revised Laws of 1902, and as reorganized by the Commissioners entrusted with the revision and codification of the General Laws, they appear primarily in Ch. 119, s. 68-83 (except s. 74) and Ch. 120, s. 1-26. Material the subject of which was carried over, but the substance of which was changed substantially in the enactment of St. 1906, c. 413, is found, in the General Laws of 1921, under Ch. 119, s. 54, 55, 58, 65, 66, and 67. As a crude generalization, the enactments of St. 1906, c. 413 concern themselves more with the "substance" of the juvenile code and such issues as jurisdiction, proper tribunals, limitations on detention

and commitment, etc., whereas the provisions carried over from the Revised Laws of 1902 concern themselves more with the mechanics of commitment and the governance and administration of the training schools.

There are a number of important additions or changes, most of which were added by St. 1906, c. 413, which are included in the General Laws of 1921 and which were not included or which were substantively different in the Revised Laws of 1902. These changes fall primarily into four categories: (1) the definitional establishment of the concepts "delinquency" and "waywardness"; (2) the relative decriminalization of the juvenile process; (3) the establishment of a defined juvenile court system; and (4) a variety of provisions designed for the protection of children. The most important of these changes is perhaps the relative decriminalization of the juvenile offender process. This decriminalization is intimately bound up with the concepts of delinquency and waywardness, and its effect is that for a certain category of offenses (generally any offense not punishable by death or life imprisonment) non-criminal delinquency proceedings must be begun against children between the ages of seven and fourteen, and may be begun against children between the ages of fourteen and seventeen. There are numerous exceptions to this general rule of decriminalization which very much emasculate its impact. Criminal proceedings may be begun against any child who commits an offense punishable by death or life imprisonment, against any child between the ages of fourteen and seventeen who has committed a criminal offense, and against any child against whom delinquency proceedings have been dismissed because he or she is deemed an unsuitable subject for delinquency proceedings. Nevertheless, the importance of the precedent of relative decriminalization is not to be underestimated in the development of the juvenile code of the Commonwealth.

St. 1906, c. 413, also established a much better defined court system within which juvenile complaints would be handled. While previously juvenile complaints were handled by police courts, district courts, municipal courts, trial justices, judges of probate, specially appointed commissioners, and in the case of appeals, the superior courts, some of which did and some of which did not have separate juvenile sessions, now juvenile complaints in the first instance would be handled only in the juvenile sessions of district and municipal courts, and appeals in the juvenile session of the superior courts.

Another important invention of St. 1906, c. 413 was the introduction of probation officers as an integral part of the juvenile justice system.

St. 1906, c. 413 also enacted numerous provisions which were designed to make the juvenile justices system less harsh and foreboding, and to maximize the "parens patriae" aspects of the system. These provisions include: that evidence from or the fact of a delinquency adjudication is not to be used in any other court proceedings except a subsequent delinquency or criminal trial against the same juvenile; that the age limit for summoning children, as opposed to arresting them, was upped from under twelve to under fourteen; that a child adjudicated wayward or delinquent may not be committed to a jail or house of correction; that the trial of juvenile offenders must take place not only in separate sessions but in separate rooms as well, and that the public is excluded from these proceedings; that the minimum age limit for detention in a house of correction or jail has been upped from twelve to fourteen, and the inclusion of lockups and police stations as places where children under fourteen are not ordinarily to be detained; that the provisions on bail have been expanded so that (1) the age limit for children who must be committed to the Department of Public Welfare if they cannot make bail has been upped from "under twelve" to "under fourteen," and (2) that children fourteen and over who cannot make bail can be committed to jail or to the custody of a probation officer instead of just to jail; and that delinquency cases against children between seven and fourteen must be dismissed before criminal charges may be brought against them.

Other changes wrought between 1902 and 1921 concern themselves with the Industrial School for Boys, established to house boys between the ages of fifteen and eighteen, and the powers and authority of the Department of Public Welfare as the sucessor to the State Board of Charity.

Provisions of the Revised Laws of 1902 that were deleted from the General Laws of 1921 include all the provisions on indenture, all the provisions on the State Board of Charity (most of which were bound up with the indenturing of children as well), and the provision on the commitment of vagrant girls.

Of the provisions carried over from the Revised Laws of 1902 to the General Laws of 1921 substantially unchanged, most fell into one of two categories: (1) provisions on the mechanics of commitment, and (2) provisions on the governance and administration of the training schools. Provisions in the first category include: the section on the warrant of commitment; the section on the certification of age and residency; the section on the return of warrants for the commitment of girls; the section on appeal of a sentence of commitment; and the section on the sentencing power of the superior courts. Provisions in the latter category include: the section on the instruction of boys and girls; the section on visits by trustees to the training schools; the section on the powers of the superintendents; the section on the term of detention and discharge; the section on transfer to the Massachusetts Reformatory at the request of the trustees; the section on transfer of training school inmates to hospital cottages; the section on corporate punishment in the Lyman School; the section on the early discharge of training school inmates; the section on parole and the placing of training school inmates outside of the institutions; and the section on the power of the trustees to be guardians for committed children in certain cases.

Sections of the General Laws of 1921 Which Have Been Repealed by 1985

1. G.L. 119, s. 76: providing that a child charged with a criminal complaint in accordance with the provisions of 119, s. 75 may, at the request of the Department of Public Welfare, be placed with any person or, if the child proves unmanageable, be committed to one of the training schools.

2. G.L. 119, s. 78: providing that in the warrant of commitment the age and residence of the child should be certified.

3. G.L. 119, s. 79: providing for the issuing of a warrant of recommitment without requiring the issuance of a summons in accordance with 119, s. 55, in cases of children previously committed to one of the training schools.

4. G.L. 119, s. 81: providing for an appeal to the superior court of a sentence or order of commitment made by a district court or trial justice in its criminal session.

5. G.L. 119, s. 82: providing that warrants issued by trial justices for the commitment of girls be returned to the superior court.

6. G.L. 120, s. 17: providing that the legal custody of a training school inmate transferred to the Massachusetts Reformatory or the Reformatory for Women goes to the institution to which the transfer has been made.

7. G.L. 120, s. 18: providing that training school inmates may, at the request of the trustees, be transferred to the Hospital Cottages for Children or the Massachusetts School of the Feeble-minded.

8. G.L. 120, s. 19: providing for corporal punishment in the Lyman School.

**Other sections have been substantially amended or changed in the period between 1921 and 1985. Only the above-listed sections have been deleted entirely, however.

**Several sections of Ch. 119 and many of the sections of Ch. 120 have been renumbered in the period between 1921 and 1985. The current edition of M.G.L.A. has tables which correlate these changes in detail.

Summary of Important Changes in the General Laws Between 1921 and 1985

While this report concerns itself primarily with the pre-1921 juvenile codes, it is useful at this juncture to simply summarize some of the more important changes in the code from 1921 to 1985.

1. The Elimination of the Concept of Waywardness

Waywardness, a watered down version of the "commitment of vagrant girls" provision that had originated in 1855, and not really a well-defined offense at all, was eliminated from the code in 1973.

2. Changes in the Structure of the Juvenile Court System

The 1978 reorganization of the Massachusetts Trial Court System established a Juvenile Court Department, consisting of the Juvenile Courts of Boston, Worcester, Springfield, and Bristol County, and a juvenile session in the district courts except those of Springfield, the Central District of Worcester, and all four districts of Bristol County.

Appeals of an adjudication of delinquency do not go to the superior court but go to an appellate jury session in juvenile court, or to the juvenile appeals session of a district court. The only cases which go to the superior court are criminal cases after a transfer hearing has been held, and delinquency proceedings have been dismissed, or an appeal of the propriety of the transfer hearing itself.

3. The Establishment of Due Process Rights In the Delinquency Adjudication

The Supreme Court of the United States has mandated that certain due process rights be granted to juveniles in delinquency proceedings, and these requirements are reflected, explicitly and sometimes implicitly, in the 1985 provisions of the General Laws. Due process rights that the Supreme Court has mandated include: (1) written notice of the alleged charges; (2) notification of the child's right to counsel; (3) the right to exercise the privelege against self-incrimination; (4) the right to cross examine adverse witnesses under oath; and (5) that the standard of proof at delinquency adjudication must be by "proof beyond a reasonable doubt." See In re Gault, 387 U.S. 1 (1967), In re Winship, 397 U.S. 358 (1970).

4. Constitutionally Mandated Limitations on Transfer Hearings

The Supreme Court has ruled in Breed v. Jones, 421 U.S. 519 (1975), that the double jeopardy clause of the Constitution forbids the criminal trial of a juvenile after he has been tried as a delinquent for the same offense. This constitutional limitation is reflected in the General Laws of 1985. Criminal charges can only be brought against juveniles between the ages of fourteen and seventeen and only after the delinquency complaint has been dismissed. In every case the delinquency complaint must be dismissed as part of a transfer hearing before any hearing on the merits of the delinquency complaint can take place. The transfer hearing functions both as a determination of the suitability of transfer and of probable cause.

Under G.L. (1985) Ch. 119, s. 61, transfer of a juvenile can only take place under very specific conditions. In order to be subject to transfer, the accused juvenile must have been between the ages of fourteen and seventeen at the time of the commission of

the alleged offense. He must either have been previously committed to the Department of Youth Services as a delinquent child and be charged with an offense which, if he were an adult, would be punishable by incarceration in the state prison, or he must be charged with an offense involving the infliction or threat of serious bodily harm. Additionally, the court must enter a written finding, based on clear and convincing evidence, (1) that the juvenile presents a significant danger to the public, and (2) that he is not amenable to rehabilitation. These last findings are amplified by certain subsidiary findings, regarding the seriousness of the offense, the child's family, school and social history, the adequate protection of the public, the nature of any past treatment efforts, and the likelihood of rehabilitation.

Notice that under the General Laws of 1985 there is no "automatic transfer" provision for certain categories of offenses, such as there was under the General Laws of 1921. In 1921, being charged with a crime punishable by death or life imprisonment subjected any juvenile between the ages of seven and seventeen to automatic transfer into the criminal courts. Notice also that in 1985 no juvenile under the age of fourteen may be tried as a criminal under any circumstances.

5. Limitations on Commitment and Detention in Adult Facilities

Between 1921 and 1985 the legislature enacted a number of provisions which limited the commitment or detention of juveniles in adult facilities. On the commitment side, the legislature mandated that no child adjudicated wayward or delinquent could be committed to a jail, house of correction, or other adult facility. Instead, commitments could be made only to the custody of the Youth Service Board and its successors. The Department of Youth Services has since succeeded the Youth Service Board. Juveniles found guilty of a criminal offense can still be sentenced to an adult facility or, if they are under eighteen, they may, at the discretion of the superior court, be adjudicated delinquent and committed to the custody of the Department of Youth Services.

As concerns detention after arrest, children between the ages of seven and fourteen arrested with or without a warrant may be held at Department of Youth Services approved police stations, town lockup facilities, or D.Y.S. detention homes only until a parent, guardian, or reputable person arrives to retrieve the child, or until a probation officer requests the child's release. A child between the ages of fourteen and seventeen who is arrested with or without a warrant may be held in D.Y.S. approved facilities at police stations or town lockups, or in D.Y.S. detention homes, at the request of the arresting officer or the direction of the court or a probation officer. Any child, whether between seven and fourteen or between fourteen and seventeen, may be admitted to bail in accordance with law.

As concerns detention pending further examination, trial, continuance, a transfer hearing, or the prosecution of an appeal, any child between the ages of seven and seventeen who is unable to furnish bail may be committed to the custody of the Department of Youth Services or to a probation officer, or to a parent, guardian, or some other responsible person. In no case may such a child be committed to a jail, house of correction, or other adult facility.

6. Establishment of the Youth Service Board and Its Successors

In 1948 the General Court enacted legislation establishing the Youth Service Board, which Board would have supervisory power over all the training schools as well as any other institution established for the treatment and care of wayward or delinquent children. Henceforth, the courts in their juvenile jurisdiction could not commit a child to a particular training school but only to the custody of the Youth Service Board, which had relatively complete discretion to hold, place, or release a child so committed. The Youth Service Board has been succeeded in the meantime by the Division of Youth Services and, at present, the Department of Youth Services.

Chapter 18A Department of Youth Services

Section Analysis: Chapter 18A of Mass. General Laws

Chapter 18A, s. 1: Department of youth services; commissioner; powers and duties; federal funds

1. St. 1969, Ch. 838, s. 1, established the Department of Youth Services, to be operated under the supervision and control of a Commissioner of Youth Services. This amendment effectively abolishes the previously existing Youth Service Board and Division of Youth Service, as well as transfers all powers inherent in these entities to the Department of Youth Services.

2. St. 1972, Ch. 300, s. 19A, increased the salary of the Commissioner from $25,000 to $26,075.

3. St. 1973, Ch1 426, s. 23, increased the salary of the Commissioner from $26,075 to $26,935.

4. St. 1974, Ch. 855, s. 6, permited a maximum salary for the Commissioner of $28,605.

5. St. 1977, Ch. 234, s. 73 to s. 75, instituted incremental salary increases resulting in an increase in the salary of the Commissioner to $29,455.

6. St. 1977, Ch. 872, s. 70 to s. 72, instituted incremental salary increases resulting in an increase in the salary of the Commissioner of $31,716.

7. St. 1981, Ch. 699, s. 31, added a provision that the Commissioner shall be classified and salaried according to s. 45 of Ch. 30 and further, that the Commissioner shall devote his full time during business hours to the duties of his office. Additionally, this amendment designates the Commissioner as the executive head of the Department.

Related Laws:

St. 1982, Ch. 320, s. 11, permits the appointment and removal of the Commissioner by the Secretary of Human Services, with the Governor's approval.

St. 1983, Ch. 504, s. 11, amends St. 1982, Ch. 320, s. 11 by adding that the Commissioner shall be appointed and serve at the pleasure of the Secretary, and may be removed by the Secretary at any time, with the Governor's approval.

Chapter 18A, s. 2: Delinquency prevention programs

1. St. 1969, Ch. 838, s. 2. This section specifies that the Department shall provide a comprehensive and coordinated program of delinquency prevention, and services to delinquent juveniles who have been referred or committed to the Department by the courts. Further, community services for the prevention of delinquency shall be provided through grants and other sources. The section also provides that the Department shall maintain a research program into the causes, treatment, and prevention of delinquency.

Chapter 18A, s. 3: Deputy commissioner

1. St. 1969, Ch. 838, s. 3. This section provides that the Commissioner shall appoint a Deputy Commissioner with the Governor's approval, whose qualifications shall be the same as the Commissioner except that he shall have a minimum of 5 years experience in the field of juvenile delinquency, two of which shall have been in an administrative capacity. Further, the Deputy Commissioner shall serve at the Commissioner's pleasure, devote full time during business hours to the duties of his office, act in accordance with authority delegated to him by the Commissioner, and may act as the Commissioner in the Commissioner's absence or incapacity until such absence or incapacity has terminated.

   Related Laws:

   St. 1982, Ch. 320, s. 12, provides essentially the same as section 3 except that the Commissioner's appointment of a Deputy Commissioner shall be made with the approval of the Secretary of Human Services.

   St. 1983, Ch. 504, s. 12, adds that the removal, as well as the appointment of the Deputy Commissioner shall be subject to the approval of the Secretary of Human Services.

   St. 1984, Ch. 239, s. 1, 2. See related laws, s. 1 of Chapter 18A.

Chapter 18A, s. 4: Bureaus

1. St. 1969, Ch. 838, s. 4, provides for the following five bureaus in the Department, each of which shall be under the direction of an Assistant Commissioner: clinical services, after-care, delinquency prevention and community services, educational services, and institutional services.

Chapter 18A, s. 5: Bureau of clinical services; duties; detention centers; assistant commissioner

1. St. 1969, Ch. 838, s. 5. This section provides that the Bureau of Clinical Services shall review social and diagnostic data of referred or committed persons and place them under appropriate care. Further, the Bureau shall develop and implement individualized treatment programs for committed persons, as well as assume responsibility for case assignments, reassignments, discharge, proposals, etc. In addition, this Bureau shall operate the Reception-Detention Center for Girls at Boston, Judge John J. Connelly Youth Center, Boston. Westfield Detention Center, Westfield and Worcester Detention Center, Worcester, as well as other centers as needed for diagnosis of committed persons and temporary shelter care for emergency cases.

   In addition, this section provides that the Commissioner shall appoint an Assistant Commissioner for the Bureau of Clinical Services who shall be a psychiatrist accredited by the American Board of Child Psychiatry, with a minimum of 10 years experience in the field of child mental health. Further, the Assistant Commissioner shall serve at the pleasure of the Commissioner and may be allowed other professional affiliations, subject to the Commissioner's approval. The Assistant Commissioner shall also be responsible for the establishment and maintenance of standards for clinical positions within the Department and shall make recommendations for replacement or addition of staff to the Commissioner.

Chapter 18A, s. 6: Bureau of after-care, delinquency prevention and community services; duties; assistant commissioner

1. St. 1969, Ch. 838, s. 6. This section provides that the Bureau of After-care, Delinquency Prevention, and Community Services shall be responsible for the noninstitutional programs of the Department, the development of alternatives to institutional care, and for work with the families of institutionalized children. Further, the Bureau shall be responsible for consultation on preventive programs, funding mechanisms for new community programs, and the school adjustment counselor program.

   The second paragraph provides for the appointment, by the Commissioner, of an Assistant Commissioner for the Bureau of After-care, who shall hold an earned graduate degree from an accredited institution in the social sciences, education, or related fields, as well as a minimum of 5 years professional experience in delinquency prevention and after-care, of which two years were spent in an administrative capacity. Further, the Assistant Commissioner shall serve at the Commissioner's pleasure.

Chapter 18A, s. 7: Bureau of educational services; duties; assistant commissioner

1. St. 1969, Ch. 838, s. 7. This section provides that the Bureau of Educational Services shall establish and maintain the educational service functions at the institutions, as well as coordinate services for youths at each stage of departmental jurisdiction. This shall include academic and vocational educational programs, curriculum development teacher training and library services. Additionally, this Bureau is responsible for seeking out and implementing federally aided educational programs and initiating inservice training programs that meet the approval of the director of personnel and standardization.

   The second paragraph provides for the appointment of an Assistant Commissioner for the Bureau of Educational Services, who shall hold an earned graduate degree from an accredited institution in education, social sciences, or related fields with a specialty in problems relating to delinquency. Further, the Assistant Commissioner shall have at least 5 years professional experience in public or private secondary school, either teaching delinquent youth, or involved in delinquency prevention. The Assistant Commissioner shall serve at the Commissioner's pleasure, and shall establish and maintain standards for all teaching positions in the jurisdiction of the Department as well as make recommendations, together with the other Assistant Commissioners, for replacement and additional teaching personnel.

2. St. 1974, Ch. 835, s. 22. This amendment substituted the words "personnel administrator" for "director of personnel and standardization" in the last sentence of the first paragraph.

Chapter 18A, s. 8: Bureau of institutional services; duties; assistant commissioner

1. St. 1969, Ch. 838, s. 8. This section provides that the Bureau of Institutional Services shall operate certain facilities and programs within the institutions of the Department which are not primarily clinical or educational and shall evaluate the effectiveness of such programs.

The second paragraph of this section provides for the appointment of an Assistant Commissioner who shall hold an earned graduate degree from an accredited institution in the social sciences, education, or related fields and who shall have at least 5 years experience working with delinquent children, at least two of which have been spent in an administrative capacity. Further, the Assistant Commissioner shall serve at the Commissioner's pleasure and shall make recommendations to the Commissioner regarding needed alternatives of existing facilities or construction of additional facilities.

Chapter 18A, s. 9: Advisory committee

1. St. 1969, Ch. 838, s. 9. This section provides that the membership of the Advisory Committee includes the following: The Commissioners of Youth Services, Mental Health, Education, Correction, and Rehabilitation, the Chairman of the Massachusetts Commission Against Discrimination, the Executive Secretary of the Massachusetts Society for the Prevention of Cruelty to Children, and the Executive Secretary of the Massachusetts Committee on Children and Youth. Additionally, eight other members will be appointed by the Governor.

   Further, the Committee's duties were delineated as follows: (a) advise the commissioner on policy, program development and priorities for comprehensive programming for juvenile offenders; (b) review annual plan and budget and make recommendations; (c) advise on recruitment policies of the schools; (d) submit an annual report which may include proposed legislation; (e) visit, at its discretion, every institution and facility within the jurisdiction of the department.

2. St. 1970, Ch. 490, inserted "the commissioner of probation" in the first sentence.

3. St. 1973, Ch. 242, inserted "the chairman of the parole board" after the word "education" in line 3.

4. St. 1977, Ch. 162, added "the commissioner of welfare, and the director of the office for children" as members of the Advisory Committee.

   Related Laws:

   St. 1982, Ch. 320, s. 13, provides essentially the same as St. 1977, Ch. 162, except that the members of the Committee shall be appointed by the Secretary of Human Services, with the Governor's approval; and further, that vacancies and the appointment of a chairman and vice-chairman shall be filled by the same procedure. Further, nine additional persons will be appointed by the Governor.

   St. 1983, Ch. 504, s. 13, provides the same as St. 1982, Ch. 320, s. 13.

   St. 1984, Ch. 239, s. 1, 2, strikes section 25 of chapter 504 (which provides that the act shall take effect 7/1/83, and become inoperative on 6/30/84) and substitutes 6/30/85 as the date at which time the act shall become inoperative.

Chapter 119 Protection and Care of Children, And Proceedings Against Them

Section Analysis: Chapter 119 of Mass. General Laws

Chapter 119, s. 52: Definitions

1. St. 1906, c. 413, s. 1, was the enacting statute for this section. It defined four terms:

   (1) "Court," which was construed to mean a police, district, or municipal court, or a trial justice;

   (2) "Probation officer," which was construed to mean a probation officer or assistant probation officer of the court having jurisdiction over the pending case

   (3) "Delinquent child," which was construed to mean any boy or girl between the ages of seven and seventeen who violates any city ordinance or town by-law, or commits an offense not punishable by death or by imprisonment for life; and

   (4) "Wayward child," which was construed to mean any boy or girl between the ages of seven and seventeen who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him or her to lead an immoral, vicious, or criminal life.

2. St. 1917, c. 326, s. 2, while not a direct amendment to St. 1906, c. 413, repealed that section of the Revised Laws relative to the appointment, compensation, and jurisdiction of trial justices. This repeal was relevant to St. 1906, c. 413, only in that a trial justice was included under the definition of "court".

3. G.L. Ch. 119, s. 52 (1921 Revision). The 1921 revision changed a good deal of the actual wording of this section. These changes include:

   (1) The new first three lines of the section, providing that the words "court," "delinquent child," "probation officer," and "wayward child" shall have, except as otherwise provided, the meanings assigned to them in the section.

   (2) The change in the form of the definitions, as reflected by the following example: instead of reading, "The words 'probation officer' shall be construed to mean a probation officer or assistant probation officer of the court having jurisdiction of the pending case," the definition now read, "'Probation officer,'" a probation officer or assistant probation officer of the court having jurisdiction of the pending case."

   (3) The order of the definitions was changed. Whereas before the definition of "probation officer" preceded that of "delinquent child," now the two were reversed in their order.

   (4) The definition of court was substantively amended, so instead of meaning a "police, district, or municipal court, or trial justice," a court was redefined as meaning "the Boston Juvenile Court or a district court, except the Municipal Court of the City of Boston."

4. St. 1948, c. 310, s. 3, struck out the words "or by imprisonment for life" from the definition of "delinquent child." The net effect was that offenses punishable by imprisonment for life were inserted into the jurisdiction of the delinquency process. Thus, a child between the ages of seven and seventeen charged with an offense punishable by life imprisonment would now have to be tried as a delinquent unless delinquency charges were dismissed and criminal charges brought, as required by the transfer sections of the code.

5. St. 1960, c. 353, s. 1, struck out the phrase "not punishable by death" from the definition of delinquent child. The effect was that offenses punishable by death were no longer automatically outside of the jurisdiction of the delinquency code, so that when a child between seven and seventeen was charged with an offense punishable by death a delinquency complaint had to be brought and dismissed, as required by the transfer sections of the code, before criminal charges could be filed against the child.

6. St. 1965, c. 659, s. 2, added the phrase "and the municipal court of the Roxbury district" to the definition of "court," thereby excluding the Roxbury Municipal Court from the district courts having jurisdiction over juvenile cases.

7. St. 1969, c. 859, s. 9, added the references to the Worcester and Springfield Juvenile Courts to the definition of "court," and excluded the Central District Court of Worcester and the District Court of Springfield from those district courts having jurisdiction over juvenile cases.

8. St. 1972, c. 731, s. 9, added the reference to the Bristol County Juvenile Court to the definition of "court," and excluded all four district courts of Bristol County from those district courts having jurisdiction over juvenile cases.

9. St. 1973, c. 1073, s. 6, struck out the definition of "wayward child" from the section. The effect was that the only offenses over which the juvenile system retained jurisdiction were those offenses which constituted acts of delinquency.

10. St. 1978, c. 478, s. 55, rewrote the definition of "court," in the wake of the reorganization of the Massachusetts Trial Court System. As rewritten, "court" is now defined as "a division of the juvenile court department or of the district court department, except the central district court of Worcester, the district court of Springfield, the first district court of Bristol, the second district court of Bristol, the third district court of Bristol, and the fourth district court of Bristol." The effect of this rewriting was that the Boston Municipal Court and the Roxbury Municipal Court were excluded from the list of district courts which do not enjoy jurisdiction over juvenile cases. In other words, jurisdiction to hear juvenile cases was implicitly reinstated to the Boston and Roxbury Municipal Courts. Notice also that the four juvenile courts of Boston, Springfield, Worcester, and Bristol County are subsumed in the definition of "juvenile court department."

Chapter 119, s. 53: Liberal construction

1. St. 1906, c. 413, s. 2, was the enacting statute for this section. It provided that the act should be liberally construed so that the "care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents." The section provided further that, "as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under this act shall not be deemed to be criminal proceedings."

Chapter 119, s. 54: Proceedings

1. St. 1906, c. 413, s. 3, was the enacting statute for this section. It provided in its first paragraph that if a complaint is made to any court that a child between the ages of seven and seventeen is wayward or delinquent, the court shall examine on oath the complainant and the witnesses, if any, it shall reduce the complaint to writing, and cause it to be subscribed by the complainant. In the second paragraph the statute provided in essence that if a child is under fourteen the court

will first issue a summons requiring the child's appearance, unless the court has reason to believe that the child will not appear on a summons or unless the child had actually failed to appear on a summons. In such instances a warrant may issue.

2. G.L. 119, s. 54 (1921 Revision). The revision severed the first two paragraphs of St. 1906, c. 413, s. 3, and reorganized them into this separate section. The revision made no changes in the first paragraph, but tightened up the language of the second paragraph.

3. St. 1966, c. 374, changed from "twelve" to "fourteen" the age at which a child against whom a juvenile complaint has been filed must ordinarily be brought in on a summons.

4. St. 1973, c. 1073, s. 7, struck out the reference to a "wayward child" in the second line.

Ch. 119, s. 55: Summoning of parent or guardian, etc.

1. St. 1906, c. 413, s. 4, was the enacting statute for this section. It provided in the first paragraph that when a boy or girl is brought up on a complaint, a summons shall be issued to one of the parents, if either of them resides in the city or town where the child was found, or to the lawful guardian, if so resident, or to the person with whom such child resides, if known. The summons will require the person served to appear and show cause why the child should not be adjudged wayward or delinquent. If there is no person who can be summoned, the court may appoint a suitable person to act in the child's behalf.

The second paragraph provided that if a child is summoned, the time of appearance in the summons of the parent, guardian, or other person shall, when practicable, be the same as that fixed for the appearance of the child.

The third paragraph provided that unless service of the summons is waived in writing, it shall be served by a constable or police officer by delivering it personally to the addressee, or by leaving it with a person of proper age at the place of residence or business of the addressee. The constable or police officer must make immediate return to the court of the time and manner of the service.

The fourth paragraph provided that if the court is of the opinion that the interests of the accused child require the attendance at any proceedings of an agent of the State Board of Charity, then at the request of the court an agent of the State Board may attend the proceedings to protect the interests of the child.

2. G.L. 119, s. 55 (1921 Revision). The revision tightened up the language of St. 1906, c. 413, s. 4 a little bit, but otherwise left the section intact.

The only substantive change was the substitution, in the fourth paragraph, of "the department" for "the state board of charity." The State Board of Charity had been succeeded in the meantime by the Department of Public Welfare (see St. 1919, c. 350, s. 87).

3. St. 1931, c. 207 amended the section to provide that a summons could issue to any parent or guardian residing in the Commonwealth. Previously a summons could only be issued to parents or guardians residing in the town where the child was found.

4. St. 1949, c. 593, s. 6, inserted "an agent of the youth service board" for "an agent of the department" in the last paragraph of the section. Thereafter, an agent of the Youth Service Board instead of an agent of the Department of Public Welfare could be notified and could attend proceedings to protect the interests of the child.

5. St. 1952, c. 605, s. 3, substituted "as provided in section fifty-four" for "as provided in the preceding section" in the second line of the first paragraph, and substituted "division of youth service" for "youth service board" in the last paragraph.

6. St. 1969, c. 838, s. 14, substituted "department of youth services" for "division of youth services" in the last paragraph of the section.

7. St. 1973, c. 1073, s. 8, deleted the reference to "wayward child" from the first section of the paragraph.

Ch. 119, s. 55A: Jury trials

1. St. 1978, c. 478, s. 56, was the enacting statute for this section. It provided in essence for a two-tier trial system in the case of delinquency complaints. This section has not been amended since its original enactment. A juvenile may either be tried in a division of the district court or the Juvenile Court Department before a jury in the first instance, or he or she may waive that right and opt for a bench trial subject to a right to appeal in accordance with the provisions of G.L. 119, s. 56.

2. St. 1978, c. 478, s. 321-323 dealt with cases of appeals to the superior court before the establishment of the Juvenile Court Department. They did not amend any aspect of St. 1978, c. 478, s. 56.

Ch. 119, s. 56: Adjournments, appeals

1. St. 1906, c. 413, s. 5, was the enacting statute for this section. The statute provided that hearings on cases under this act may be adjourned from time to time. A child that has been adjudged wayward or delinquent may appeal to the superior court, and such child must be notified of his right of appeal at the time of adjudication. The provisions of Ch. 217, s. 34, and Ch. 219, s. 22, of the Revised Laws of 1902, relative to recognizance in cases continued or appealed, are applicable to cases arising under this act.

2. St. 1916, c. 243, s. 1, added four sentences to the middle of the first paragraph of St. 1906, c. 413, s. 5, which provided essentially that the trial of appeals in the superior court shall not be in conjunction with the other business of the court, but shall be held in separate sessions known as the juvenile sessions, for which a separate trial list and docket shall be kept. All juvenile appeals cases are transferred to this list unless otherwise disposed of by direct order of the court. In any appeals case the superior court shall, before passing sentence or ordering other disposition, receive a report of any investigation of the case made by the probation officer of the court from which the appeal was taken.

   The net effect of this amendment was to provide for separate juvenile sessions in cases appealed to the superior court, and to establish some rules regarding those sessions.

3. G.L. 119, s. 56 (1921 Revision). The revision separated the first paragraph of St. 1906, c. 413, s. 5 from the rest of the statute, and reorganized that paragraph to form the entirety of G.L. 119, s. 56.

   The revision also rewrote the last sentence of the paragraph, substituting references to Ch. 276, s. 35 and Ch. 278, s. 18 of the General Laws for the citations to the Revised Laws of 1902, and substituting "arising under sections fifty-two to sixty-three inclusive" for "arising under this act."

4. St. 1927, c. 181, s. 1, rewrote the second sentence of the section substantially. As rewritten the sentence provided that a child adjudged wayward or delinquent may appeal to the superior court upon adjudication, and may also appeal to that court at the time of the order or commitment or the sentence, in which event the entire case shall be before the superior court as if it had commenced there originally. The child must be notified of his or her right to appeal at the time of adjudication and also at the time of the order of commitment or sentence.

   The effect of this amendment was primarily that of (1) giving the child the option of appealing not only at the time of adjudication but also at the time of the sentence or order of commitment, and (2) of having transferred cases heard in the superior court as if they had originated there.

5. St. 1943, c. 244, s. 1, took the second sentence of the section and broke it up into two sentences. The statute deleted the phrase "in which event the entire case shall be before the court as if originally commenced therein" from the sentence and added instead a subsequent sentence which read as follows: "If such child appeals to the superior court at either of said times, said court shall thereupon have jurisdiction of such case, and such case shall fortwith be entered in said court."

6. St. 1964, c. 308, struck out the seventh sentence of the section and inserted therein two sentences, which provided as follows: in any appealed case, if the allegations with respect to the accused child are proven, the superior court may not commit the child to any correctional institution, jail, or house of correction, but may adjudicate the child to be a wayward or delinquent child and make such disposition of the case as may be made by a court under G.L. 119, s. 58. Before making such disposition the superior court shall be supplied with a report of any investigation made by the probation officer of the court from which the appeal was taken.

   The impact of this amendment was that it prohibited a superior court from passing a criminal sentence on a juvenile who appealed his or her adjudication of delinquency or waywardness. Notice that in no case were these appeals from the imposition of a criminal sentence; they were always appeals of a delinquency or waywardness adjudication.

7. St. 1971, c. 336, added a second paragraph relating to appeals in the Boston Juvenile Court before a jury of twelve. The paragraph provided, in essence, that rules adopted in concurrence by the Boston Juvenile Court and the Superior Court may provide that a child adjudged wayward or delinquent in any district court in Suffolk County, or in the Boston Juvenile Court, may appeal to and claim a jury of twelve in the Boston Juvenile Court. The section continues by specifying a variety of rules regarding these jury of twelve sessions. These included, (1) that the justice presiding over a jury of twelve in the Boston Juvenile Court may exercise all the powers of the justice of the superior court sitting on a juvenile appeals case; (2) that no justice may preside over a jury of twelve in any proceeding in which he has previously taken a part; (3) that the number of preemptory challenges shall be the same as in criminal cases in the superior court; and (4) that jurors shall be drawn from the pool of jurors available for the jury sessions in the Superior Court for Suffolk County.

8. St. 1973, c. 1073, c. 9-11, amended the section by striking out references to "wayward child" in the first and seventh sentences of the first paragraph, and in line #3 of the second paragraph.

9. St. 1975, c. 813, substituted "shall" for "may" in the second line of the second paragraph, thereby providing that rules adopted in concurrence by the Superior Court and the Boston Juvenile Court shall provide, subject to conditions, that a child adjudged delinquent in the Boston Juvenile Court or in any district court of Suffolk County may appeal to a jury of twelve in the Boston Juvenile Court.

10. St. 1977, c. 431, rewrote the first sentence of the second paragraph to provide that any child adjudged a delinquent in any district court in Suffolk County or in the Boston Juvenile Court shall appeal to the Boston Juvenile Court and claim a jury of twelve, if he or she so desires. The effect of this rewriting was to make it clearer that a child has a right to appeal to a jury of twelve from a delinquency adjudication.

11. St. 1978, c. 478, s. 56, constituted a comprehensive revision of the section. The first paragraph was changed significantly. A new second paragraph was added, deriving from the material of the seventh sentence of the old first paragraph. The new third paragraph was derived from the third sentence and the subsequent material of the old third paragraph. The new fourth paragraph was derived from the material including and subsequent to the seventh sentence of the old second paragraph.

The new first paragraph did not change the provisions relative to adjournment. The second sentence, however, was revised. It now provides that a child adjudged delinquent may, upon adjudication or upon order of commitment or sentence, appeal to a jury session in the district court of the county where the hearing was held. Previously appeals went to the superior court. Also, instead of the superior court obtaining jurisdiction over an appealed case, the jury session of the district court now obtains such jurisdiction. The appeal, if taken, is still determined in like manner as appeals in criminal cases, but the trial of such an appeal will be held separate from the other business of the district courts. Before, trials would be held separate from the other business of the superior courts. Instead of being known as the "juvenile session of the superior court" these sessions are now known as the "juvenile appeals session."

The new second paragraph, providing that if the adjudication of delinquency is upheld on appeal the court may only make such disposition as can be made under G.L. 119, and providing that G.L. 276, s. 35 and G.L. 278, s. 18, relative to recognizance in cases continued or appealed apply to delinquency proceedings, is the same as before.

The new third paragraph, substituted "justice presiding over a jury session" for "justice presiding over a jury of twelve in said juvenile court", and still provides that these justices shall have and exercise all the powers and duties of a justice of the superior court in criminal cases. A justice presiding over a jury session may still not act in any case in which he had previously taken any part. Trials by juries are still to proceed in accordance with the provisions of law applicable to trial by juries in the superior court, except that under the revision the number of preemptory challenge shall be limited to two for each defendant, and the Commonwealth is limited to a number of challenges equal to the whole number that all the defendants together are entitled to. The superior court is still to make available jurors from its pool for juvenile appeals sessions. Under the revision, trial by jury shall be by juries of six persons, except in those cases where trial would be on an indictment if the child were an adult, in which case trial will be by a jury of twelve.

The new fourth paragraph begins with a new sentence, which provides that the administrative justices of the District Court and Juvenile Court Departments shall arrange for the sitting of the jury sessions of their respective departments, to the end that speedy trials may be provided for such appeals. The paragraph continues by providing that review may be had directly by the Appeals Court, by a bill of exceptions, appeal, report, or otherwise in the same manner as provided for trial of criminal cases in the superior court. The section provided previously that review could be had directly by the Supreme Judicial Court by a bill of exceptions, appeal, etc. The new fourth paragraph still provides that a claim of trial by jury may be withdrawn before trial, in which event the trial and disposition of the case will now be by a justice of the juvenile appeals session sitting without a jury, instead of a justice of the Boston Juvenile Court.

The appeal may still be withdrawn altogether, in which event the case will be remanded to the court in which it originated for final disposition. The new fourth paragraph adds a sentence providing that G.L. 218, s. 27A(h), applies to proceedings under this section.

Deleted from this section were the first three sentences of the old second paragraph. Those sentences provided in essence that appeals were heard in a jury of twelve in the Boston Juvenile Court only when they were appeals from initial adjudications either in the Boston Juvenile Court or in any district court of Suffolk County.

The impact of this 1978 revision was therefore threefold: (1) it expanded the provisions for appeal from cases arising in Suffolk County only to cases arising anywhere in the Commonwealth; (2) it substituted special jury sessions of the District Court and Juvenile Court Departments for the juvenile session of the superior courts as the proper venue to hear such appeals; and (3) it reduced the size of the juries from twelve to six except for those cases in which trial would be by indictment if the child were an adult.

12. St. 1979, c. 344, s. 1, deleted the reference to "bill of exceptions" in the second sentence of the fourth paragraph of St. 1978, c. 478, s. 57.

Ch. 119, s. 57: Investigation by probation officer

1. St. 1906, c. 413, s. 7, was the enacting statute for this section. It provided that every case of a wayward or delinquent child shall be investigated by the probation officer, who shall make a report regarding the character of the child, his school record, his home, his surroundings, and previous complaints against him, if any. The probation officer shall be present in the court at the time of trial and shall furnish the court with such information and assistance as shall be required. At the end of the probation period, the officer, in whose care the child has been, shall make a report as to his conduct during the probation period.

2. St. 1966, c. 147, added a sentence after the first sentence of the section which provided that in every case involving a child attending a special class authorized by law, the probation officer shall secure from the Bureau of Special Education a record of the performance of the child.

3. St. 1973, c. 1073, s. 12, deleted the reference to "wayward child" from the section.

Ch. 119, s. 58: Adjudication

1. St. 1906, c. 413, s. 8, was the enacting statute for this section. It provided, in the first paragraph, that at the hearing of a complaint against a child the court shall examine the child and any witnesses that appear, and take such testimony relative to the case as shall be produced. If the allegations against the child are proven, it may be adjudged a wayward or delinquent child, as the case may be.

The second paragraph provided that if a child is adjudged wayward, the court may place it in the care of a probation officer for such time and upon such conditions as may seem proper, or it may deal with the child in the manner provided by law for the disposal of the cases of neglected children.

The third paragraph provided that if a child is adjudged delinquent, the court may place the case on file, or may place the child in the care of a probation officer for such time and on such conditions as may seem proper. If the complaint alleges that a law of the Commonwealth has been violated the court may, with the consent of the State Board of Charity, authorize the Board to take and indenture the child, or place it in charge of any person. If the child thereafter proves unmanageable, the

State Board may commit the child, if a boy and under fifteen years to the Lyman School for Boys, and if a girl and under seventeen years to the Industrial School for Girls, until the child attains the age of twenty-one. The State Board may provide for the maintenance, in whole or in part for any child indenture or placed in the charge of any person.

The fourth paragraph provided that the court shall also have the power to commit a delinquent child to any institution to which it might be committed upon conviction for such a violation of law, excepting a jail or house of correction, and that all laws applicable to a child committed upon such a conviction shall apply to a delinquent child committed under this section.

2. St. 1916, c. 243, s. 3, inserted several lines into the fourth paragraph, which provided that boys or girls committed to the Lyman or Industrial schools shall be kept until discharged by the trustees, but not for a longer period until the boy or girl attains the age of twenty-one, and that nothing in this act shall affect or abridge the powers of the trustees to parole a child.

3. G.L. 119, s. 58 (1921 Revision). The revision only changed a few minor things: (1) it substituted "department" for "state board of charity" in several instances, and (2) it added a reference to committing an unmanageable boy between the ages of fifteen and eighteen to the Industrial School for Boys. As usual, the revision tightened up the language in places, and made such substitutions as the pronoun "he" for the pronoun "it" when referring to a child.

4. St. 1948, c. 310, s. 4, was a substantial amendment of the existing section.

In the first paragraph of the section, there were no changes.

In the second paragraph of the section, the only change was a clause added to the end of the only sentence of the paragraph which provided that a wayward child may not be committed to the custody of the Department of Public Welfare, but may be committed to the custody of the Youth Service Board.

In the third paragraph, the references to the Department of Public Welfare were changed to references to the Youth Service Board. Also, a juvenile adjudged delinquent could now be committed to the custody of the Youth Service Board as well as being placed in the care of a probation officer or having his case placed on file. The Youth Service Board, and not the Department of Public Welfare could now place the child in charge of any person, and transfer the child if he became unmanageable. Instead of transferring a child to the Lyman School or one of the Industrial schools, the Youth Service Board now had the discretion to transfer a child to that facility which in the opinion of the Board would best serve the needs of the child. The Youth Service Board, and not the Department of Public Welfare could now provide for the maintenance of any child placed in whole or in part.

The old fourth paragraph was deleted and replaced by two new paragraphs. The new fourth paragraph provided that if a child adjudged wayward or delinquent is placed on probation by a superior court, he may be placed in the care of a probation officer of the district court, including in that term the Boston Juvenile Court, of the judicial district in which the child resides.

The new fifth paragraph superseded material of the old fourth paragraph, and provided that a child adjudicated delinquent may be committed to the custody of the Youth Service Board, but may not be committed to a jail or house of correction, nor directly to the Lyman School or either of the Industrial schools, nor to any other institution supported by the Commonwealth for the custody, care and training or wayward or delinquent children or juvenile offenders.

Notice that St. 1948, c. 310, s. 22, established the Youth Service Board and provided, among other things, that the Youth Service Board would have the governance and management of all the training schools, and would have the discretion to make placements of children committed to its custody.

5. St. 1948, c. 385 added a final paragraph to St. 1948, c. 310, s. 4. This new paragraph provided that the court may make an order for payment by the parents or by the guardian out of the child's property, or by any other person responsible for the care and support of the child, to the institution, department, division, organization, or persons furnishing care and support for the child. The sums ordered shall not exceed the cost of support after the ability to pay has been determined by the court. No order for the payment of money may be entered until the person by whom payments are to be made has been summoned and given an opportunity to be heard. The court may revise or alter the order, or make a new order, from time to time.

6. St. 1969, c. 838, s. 15, made a number of minor changes in the existing section. These include:

(1) The substitution of "hear the testimony of any witnesses" for "examine the child and any witnesses" in the first sentence of the first paragraph.

(2) The insertion of the phrase "beyond a reasonable doubt" after the phrase, "(i)f the allegations against the child are proved" in the second sentence of the first paragraph. In effect this established a standard of proof of "beyond a reasonable doubt" for a delinquency or waywardness complaint.

(3) The substitution of "department of youth services" or "commissioner of youth services" for "youth service board" in the third and fifth paragraphs of the section.

(4) The amendment of the second sentence of the second paragraph to provide that if it is alleged in the complaint on which the child is adjudicated that a penal law of the Commonwealth or a city ordinance or town by-law has been violated, or in the case of habitual school offenders or truancy violators, the court may commit the child to the custody of the Commissioner of Youth Services and authorize him to place the child in the charge of any person, and if the child proves unmanageable, to transfer the child to that facility or training school which in the opinion of the court will best serve the needs of the child, but not for a longer period than until the child turns twenty-one. Changes here inlcude the language about city ordinances, town by-laws, school offenders and truancy violators, and the substitution of "facility or training school" for "facility."

(5) The deletion of the former second paragraph relating to wayward children in its entirety.

7. St. 1969, c. 859, s. 10, added references to the Worcester and Springfield juvenile courts to the fourth paragraph of the section, so that a probation officer of the district court would now include in that term not only the Boston Juvenile Court, but the Worcester and Springfield Juvenile Courts as well.

8. St. 1972, c. 731, s. 10, amended the fourth paragraph of the section by including a reference to the Bristol County Juvenile Court. The effect is the same as for St. 1969, c. 859, s. 10, supra.

9. St. 1973, c. 925, s. 42, amended the second sentence of the second paragraph by substituting the word "eighteen" for the word "twenty-one." In effect, an unmanageable child may now not be committed by the Commissioner of Youth Services to a training school or other facility for a period extending past the child's eighteenth birthday.

10. St. 1973, c. 1073, s. 13, 14, 15: struck out all references to "wayward child" from the first, third, and fourth paragraphs of the section.

11. St. 1976, c. 533, amended the second sentence and added a third sentence to the first paragraph of the section. The second sentence now reads that if the allegations against a child are proved beyond a reasonable doubt he may be adjudged delinquent, or in lieu thereof the court may continue the case without a finding and, with the consent of the child and at least one of the child's parents or a guardian, place the child on probation. The material beginning with "or in lieu thereof" is new. The new third sentence provides that probation may include a requirement, subject to agreement by the child and at least one of the child's parents or a guardian, that the child do work or participate in activities of a type and for a period of time deemed appropriate by the court.

12. St. 1978, c. 478, s. 58, substituted "juvenile appeals session" for "superior court" and "juvenile court department" for an individual listing of all four juvenile courts in the third paragraph of the section. The paragraph now reads that if a child adjudged delinquent is placed on probation by a justice of the juvenile appeals session, he may be placed in the care of a probation officer of the district court, including in that term a division of the Juvenile Court Department, for the judicial district in which such child resides.

Ch. 119, s. 58A: Physical and mental examination

1. St. 1931, c. 215, was the enacting statute. It provided that prior to the commitment of a delinquent child to any public institution or to the Department of Public Welfare the court shall cause the child to receive thorough physical and mental examinations, under rules and regulations to be prescribed by the Commissioner of Mental Diseases. Copies of the reports showing the results of the examinations must be forwarded to the superintendent of the institution to which the child is committed, or to the Department of Public Welfare, with the warrant of commitment.

2. St. 1941, c. 194, s. 6, substituted in the fifth line the phrase "commissioner of mental health" for "commissioner of mental diseases."

3. St. 1941, c. 327, substituted "may" for "shall" in the fourth line of the section, thereby allowing the court discretion to order a mental and physical examination, instead of making it mandatory.

4. St. 1947, c. 616, substituted "the court shall order the probation officer to cause" for "the court may cause" in the fifth line of the section. Notice that here the legislature apparently made the examinations mandatory once again.

5. St. 1948, c. 310, s. 5 deleted the entirety of the section from the General Laws.

Ch. 119, s. 58B: Imposition of fines for violation of motor vehicle laws

1. St. 1957, c. 194, s. 1, was the enacting statute for this section. This enactment provided as follows: if a child is adjudicated delinquent according to the provisions of G.L. 119, s. 58 for having violated any statute, by-law, ordinance, or regulation relating to the operation of motor vehicles, the court may place the case on file, place the child in the care of a probation officer, or commit him to

the custody of the Youth Service Board, as provided in G.L. 119, s. 58, and may require restitution as provided by G.L. 119, s. 62. In addition to or in lieu of such disposition, the court may impose upon the child a fine not exceeding the amount authorized for the violation of such statute, by-law, ordinance, or regulation. Any fine imposed shall be collected in the manner provided for by G.L. c. 279 and c. 280; provided, however, that if the child shall neglect, fail, or refuse to pay the fine he may be arrested and brought before the court, which may thereupon place him in the care of a probation officer or commit him to the custody of the Youth Service Board. But no child shall be committed to any jail, house of correction, or correctional institution of the Commonwealth. The provisions of G.L. 119 s. 60 and s. 60A relative to the admissibility of adjudication as evidence in subsequent proceedings and the inspection of records in delinquency cases, shall apply to any case disposed of under this section. Provided, however, that the court shall provide the Registrar of Motor Vehicles with an abstract of every such adjudication and disposition in the manner provided by G.L. 90, s. 27, and provided further that such adjudication and disposition shall be admissible as evidence in any proceeding (1) for the revocation or restoration of the child's license to operate a motor vehicle, (2) for the cancellation of a motor vehicle insurance policy covering the vehicle operated by the child, and (3) in any action of tort arising out of the negligent operation of a motor vehicle by the child, to the same extent that such evidence would be admissible if the child were an adult.

2. St. 1969, c. 838, s. 16, substituted "department of youth services" for all instances of "youth service board" in the section.

3. St. 1980, c. 96, inserted the words "or right" after the word "license" in line 30, so that a delinquency adjudication and disposition may be admissible in any proceeding for the revocation or restoration of the child's license or right to operate a motor vehicle.

Ch. 119, s. 59: Violation of terms of probation

1. St. 1906, c. 413, s. 9 was the enacting statute for this section. It provided that if a child has been placed in the care of a probation officer, said officer, at any time before the final disposition of the case, may arrest the child without a warrant and take him before the court, or the court may issue a warrant for his arrest. When the child is before the court, it may make any disposition of the case that it could have made before the child was placed on probation, or it may continue or extend the period of probation.

The second paragraph provided that if the court finds that the child has violated the conditions of probation, it may impose a fine not exceeding five dollars, and if the fine is not paid at once, in whole or in part, the court may order that the child stand committed to a jail until the fine is paid, but not for a period exceeding five days. The court shall suspend the execution of the order and continue the probation for such time as it shall fix, unless it is of the opinion that the child will default. The fine may be paid to the probation officer, whereupon the order for commitment shall be void. If at the end of the period of such suspension the probation officer reports that the fine is still unpaid, the court may extend such period, or place the case on file, or revoke the suspension of the execution of the order of commitment. If the fine, or any part thereof, is paid to the probation officer, he shall give a receipt therefor, keep a record of the payment, pay the same to the clerk at the court at its next session, and keep on file the clerk's receipt therefor.

2. G.L. 119, s. 59 (1921 Revision). The revision tightened up the language of the section a little bit, but made no noticeable changes.

3. St. 1941, c. 648, s. 1, deleted the entire second paragraph relative to the $5.00 fine imposed for a violation of the conditions of probation.

Ch. 119, s. 60: Adjudication not admissible as evidence

1. St. 1906, c. 413, s. 10, was the enacting statute for this section. It provided that a disposition of any child under this act, or any evidence given in such cases, shall not be lawful or proper evidence against such child in any proceeding in any court for any purpose, except in subsequent criminal proceedings or cases of waywardness or delinquency against the same child.

2. G.L. 119, s. 60 (1921 Revision). The revision substituted the phrase "under sections fifty-two to sixty-three, inclusive," for "under this act" in the first line of the section.

3. St. 1938, c. 174, rewrote the section substantially. As rewritten the section provided that an adjudication of any child as a wayward or delinquent child under G.L. 119, s. 52 to 59, inclusive, or the disposition of any child so adjudicated, or any evidence given in any case arising under those sections, shall not be lawful or proper evidence against the child for any purpose in any proceeding in any court, and records in cases arising against any child under these sections shall not be received in evidence or used in any way in any proceeding, except in subsequent proceedings for waywardness and delinquency against the same child and except in imposing sentence in any criminal proceeding against the same person.

The substantive changes therefore are:

(1) That this section applies only to proceedings under G.L. 119, s. 52 to 59, and not s. 52 to 63, as was previously provided.

(2) That the rewritten section also includes a prohibition on the use of any evidence arising from these cases, as well as the existing prohibition on the use of adjudication and disposition.

(3) That records from these cases may now also not be used in any subsequent proceedings.

(4) That this evidence may now no longer be used in the criminal trial of an ex-delinquent or ex-wayward child, but may only be used in imposing criminal sentence.

4. St. 1948, c. 310, s. 6, added all the material following the semi-colon in the only sentence of the section. That addition provided that such adjudication or disposition or evidence shall also not operate to disqualify a child in any future examination, appointment, or application for public service under the government either of the Commonwealth, or of any political subdivision of the Commonwealth.

5. St. 1973, c. 1073, s. 16, deleted all references to "waywardness" from the section.

Ch. 119, c. 60A: Inspection of records in delinquency cases

1. St. 1938, c. 174, s. 1, was the enacting statute for this section. It provided that the records of the court or the superior court on appeal in all cases of waywardness or delinquency arising under G.L. 119, s. 52 to 59 inclusive, shall be withheld from public inspection except with the consent of a justice of such court. However, the records in any waywardness or delinquency case against a child shall be open at all reasonable times to the inspection of the child, his or her parents, guardian, and attorney, or to any of them.

2. St. 1973, c. 1073, s. 17, deleted the reference to "waywardness" from line #2 of the section.

3. St. 1978, c. 478, s. 59, substituted "including those of a juvenile appeals session" for "or the superior court on appeal" in the first line of the section.

Ch. 119, s. 61: Dismissal of juvenile complaint (transfer)

1. St. 1906, c. 413, s. 11, was the enacting statute for this section. It provided that if it is alleged in a complaint that a boy or girl has committed an offense against the Commonwealth, or has violated a city ordinance or town by-law, and the court is of the opinion that his or her welfare, and the interests of the public require, that he or she should be tried for the offense instead of being dealt with as a delinquent child, the court may, after a hearing on the complaint, order it dismissed. Criminal proceedings shall not be begun against any child between the ages of seven and fourteen, except for an offense punishable by death or by imprisonment for life, unless proceedings against him or her have been begun and dismissed as aforesaid.

2. G.L. 119, s. 61 (1921 Revision). The revision severed the second sentence of St. 1906, c. 413, s. 11 from the first sentence, and codified the second sentence separately as G.L. 119, s. 74. Otherwise, the revision made only the following changes:

(1) It substituted "under sections fifty-two to sixty-three, inclusive," for "under this act" in the first line of the section.

(2) It substituted the pronoun "his" for the pronoun "his or her" and the pronoun "it."

3. St. 1948, c. 310, s. 7, inserted the phrase "between fourteen and seventeen years of age" in the third line of the section, so that now only children between the ages of fourteen and seventeen who have violated a law of the Commonwealth or a city ordinance or town by-law, and whose welfare and the interest of the public require that they should be tried for the offense instead of being dealt with as a juvenile, shall have juvenile complaints dismissed against them. Children under fourteen, unless they have committed an offense punishable by death or life imprisonment, may no longer have criminal proceedings brought against them.

4. St. 1964, c. 308, s. 2, rewrote some of the section without changing much substantively. As rewritten the section reads that if it is alleged in a complaint under G.L. 119, s. 52 to 63 inclusive, that a child has committed an offense against the law of the Commonwealth or violated a city ordinance or town by-law, and if the alleged offense occurred between the child's fourteenth and seventeenth birthday, and if the court is of the opinion that the interests of the public require that the child should be tried for the offense instead of being dealt with as a delinquent child, then the court may, after a hearing on the complaint, order it dismissed.

Substantive changes are really only two:

(1) That now the offense must have been committed between the child's fourteenth and seventeenth birthday, whereas before the child had to be between the ages of fourteen and seventeen when the complaint was made.

(2) That now the court need only consider the interest of the public when considering his transfer, and need no longer consider the child's welfare.

5. St. 1975, c. 840, s. 1 completely rewrote the section, and expanded it considerably. As rewritten, the section now provides that if it is alleged in a complaint made under G.L. 119, s. 52 to 63 inclusive that a child (a) who had previously been committed to the Department of Youth Services as a delinquent child has committed an offense against a law of the Commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, or (b) has committed an offense

involving the infliction or threat of serious bodily harm, and in either case if the alleged offense was committed between the child's fourteenth and seventeenth birthdays, and if the court enters a written finding based upon clear and convincing evidence (1) that the child presents a significant danger to the public as demonstrated by the nature of the offense charged and the child's past record of delinquent behavior, if any, and (2) that the child is not amenable to rehabilitation as a juvenile, the court may then, after a transfer hearing, dismiss the complaint.

The second paragraph now provides that at the transfer hearing, which must be held before any hearing on the merits of the charges alleged, the court shall find whether probable cause exists to believe that the child has committed the offense or violation as charged. If the court so finds, it shall then consider but not be limited to evidence of the following factors: (a) the seriousness of the alleged offense; (b) the child's family, school and social history, including his court and juvenile delinquency record, if any; (c) the adequate protection of the public; (d) the nature of any past treatment efforts for the child; and (e) the likelihood of rehabilitation of the child.

The third paragraph now provides that if the court determines that the child should be treated as a delinquent child, the court shall, on motion by or on behalf of the child, continue the proceeding until such further time as the court shall determine.

The fourth paragraph now provides that if the court orders the delinquency complaint against the child dismissed it shall cause a criminal complaint to be issued. The case thereafter proceeds according to the usual course of criminal proceedings and in accordance with the provisions of G.L. 218, s. 40, and G.L. 278, s. 18. When a criminal complaint is issued, G.L. 119, s. 68, shall apply to any person committed under this section for failure to recognize pending final disposition in the superior court.

The fifth paragraph now provides that unless the child by counsel waives this provision, the judge who conducts the transfer hearing shall not conduct any subsequent proceeding arising out of the facts alleged in the delinquency complaint.

Substantively, almost the entirety of the enactment here is new. The second through fifth paragraphs are completely new, and the first paragraph is a substantial revision of what had existed before as section 61. Notice the following two things about this enactment:

(1) The new requirements for transfer are much more rigorous than anything that had preceded them. Not only must the child either (1) have been previously committed to the Department of Youth Services and have committed an offense which would be punishable by incarceration in a state prison if he were an adult, or (2) have committed an offense involving the infliction or threat of serious bodily harm, but the court must also present written findings based upon clear and convincing evidence (an intermediate standard of proof) that the child presents a significant danger to the public and that he is not amenable to rehabilitation.

(2) The second paragraph enumerates a number of subsidiary findings which must be considered by the court in deciding whether or not the child presents a danger to the public and is not amenable to rehabilitation. In practice, the conclusion that the alleged offense was particularly hideous without making any of the other determinations is an insufficient basis upon which to predicate a transfer.

6. St. 1977, c. 829, s. 11, substituted "section thirty" for "section forty" in the second sentence of the fourth paragraph, so that G.L. 119, s. 30 is now the appropriate section according to which the case must proceed in the usual course of criminal proceedings.

Ch. 119, s. 62: Restitution

1. St. 1906, c. 413, s. 12 was the enacting statute for this section. It provided that if, in adjudging a child to be delinquent, the court finds that as an element of such delinquency the child has committed an act involving civil liability, if the child is placed on probation the court may require as a condition thereof that he make restitution or reparation to the injured person, to an extent and in a sum as the court shall determine. If the payment is not made at once, it shall then be made to a probation officer, who will give a receipt therefor, keep a record of the payment, pay the money to the injured person, and keep on file his receipt therefor.

2. G.L. 119, s. 62 (1921 Revision). The revision tightened up the language a little, deleting some of the unnecessary use of the word "shall," etc., but otherwise made no changes in the section.

Ch. 119, s. 63: Inducing or aiding delinquency

1. St. 1906, c. 413, s. 13, was the enacting statute for this section. It provided that if a boy or girl is adjudged wayward or delinquent, a parent of such child who is found to have been responsible for the waywardness or delinquency shall be punished by a fine of not more than $50.00, or by imprisonment in jail for not more than six months.

2. St. 1916, c. 243, s. 4, rewrote this section substantially. As rewritten, the section provided that any parent or guardian, or person having custody or control or a wayward or delinquent child, who is found to have knowingly or wilfully encouraged, aided, caused, abetted, or connived at, or who has knowingly and wilfully done any act to produce, promote, or contribute to the delinquency of a child, shall be guilty of a misdemeanor and may be punished by a fine of not more than $50.00 or by imprisonment for not more than six months. The court may release such a person on probation under the provisions of R.L. (1902) c. 217, s. 84, as amended by St. 1911, c. 8, subject to such orders as the court may make as to future conduct tending to produce or contribute to such delinquency or waywardness, or it may suspend the sentence under the provisions of R.L. (1902) c. 220, s. 1, as amended by St. 1913, c. 653, or before trial, with the defendant's consent, the court may allow the defendant to enter into recognizance in such penal sum as it may fix and under such conditions as it may order for the promotion of the future welfare of the child, and the case may be placed on file. The provisions for appeal and recognizance of St. 1916, c. 243, s. 5 shall be applicable to cases arising under this section. The Boston Juvenile Court shall have jurisdiction concurrent with the Municipal Court of the City of Boston of complaints under this section.

Substantively, the enactment made the following changes:

(1) The jurisdiction was expanded to include not only a parent, but also a guardian or a person having custody or control over a wayward or delinquent child.

(2) It added the provisions on release on probation or recognizance for a person convicted under this section.

(3) It added the provision on the Boston Juvenile Court having concurrent jurisdiction with the Municipal Court for the City of Boston.

3. G.L. 119, s. 63 (1921 Revision). The revision substituted references to provisions of the General Laws for references to the provisions of the Revised Laws as amended by the Acts and Resolves. Therefore, the court may release on probations in accordance with the provisions of G.L. 279, s. 1.

4. St. 1932, c. 95, s. 1, rewrote the first sentence to provide that "any person" who is found to have caused, induced, abetted, encouraged, or contributed toward the waywardness or delinquency of a child, or to have acted in any way tending to cause or induce such waywardness or delinquency, is in violation of the section and liable for criminal penalties.

   Substantively, the big change here was that the section was no longer limited to a parent, guardian, or person having control over a child, but that it applied in fact to "any person."

5. St. 1965, c. 348, substituted in lines six and seven "may be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both," for "may be punished by a fine of not more than fifty dollars or by imprisonment for not more than six months." Notice that this amendment did two things:

   (1) increase the potential punishment; and

   (2) establish an option for both a fine and incarceration.

6. St. 1965, c. 659, s. 3, amended the last sentence of the section to provide that the Municipal Court of the Roxbury District would also share concurrent jurisdiction with the Boston Juvenile Court over offenders under this section.

7. St. 1969, c. 859, s. 11, added two sentences to the end of the section, as most recently amended by St. 1965, c. 659, s. 3, which provided that the Worcester Juvenile Court would share concurrent jurisdiction with the Central District Court of Worcester, and the Springfield Juvenile Court would share concurrent jurisdiction with the District Court of Springfield, of complaints under this section.

8. St. 1972, c. 731, s. 11, added a sentence to the end of the section, as most recently amended by St. 1965, c. 659, s. 3, which provided that the Bristol County Juvenile Court would share concurrent jurisdiction with all four district courts of Bristol County of complaints under this section.

9. St. 1973, c. 1073, s. 18, 19.

   Section 18 added an "or" in front of "encouraged" in the first sentence of the section.

   Section 19 struck out a reference to "waywardness" in the second sentence of the section.

   The historical notes to M.G.L.A. suggest, and the best evidence confirms, that section 18 was probably intended to strike out a reference to "waywardness" from the first sentence, but through an error failed to do so.

10. St. 1978, c. 478, s. 60, struck out the fourth sentence of the section relative to the concurrent jurisdiction of the Boston Juvenile Court with the Municipal Courts of the City of Boston and the Roxbury District and inserted in its place a new fourth sentence which provides that the Boston Juvenile Court shall have jurisdiction within the territorial limits described in G.L. 218, s. 57, of complaints under this section.

    G.L. 218, s. 57 establishes the jurisdiction of the Boston Juvenile Court, which is to have the same jurisdiction as the Municipal Court of the City of Boston in its criminal session, plus certain other enumerated wards and precincts which are ordinarily within the jurisdiction of the Municipal Court for the Roxbury District. In effect then, this enactment provides that the Boston Juvenile Court will have exclusive subject matter jurisdiction over cases arising under

this section in all those areas that are part of the geographical jurisdiction of the court.

Ch. 119, s. 64: Supervision of Probation

1. St. 1906, c. 413, s. 14, was the enacting statute for this section. It provided that the State Board of Charity shall have the authority to supervise the probation work of wayward and delinquent children. The Board could make such inquiries as it considered necessary in regard to the children, and in its annual report it could make recommendations it considered advisable for the improvement of methods of dealing with children.

2. St. 1912, c. 187, s. 1, substituted in the first line "commission on probation" for "state board of charity." Substantively, the power to supervise probation work was transferred to the Commission on Probation.

3. G.L. 119, s. 64 (1921 Revision). The revision substituted "may supervise" for "shall supervise" in the first line of the section, and tightened up the language a little bit. This substitution appears to have changed the Commission on Probation's responsibility to supervise the probation work of wayward and delinquent children from a mandatory to a discretionary responsibility.

4. St. 1929, c. 179, s. 3, substituted "board of probation" for "commission on probation" in the first line of the section.

5. St. 1956, c. 731, s. 2, substituted "commissioner of probation" for "board of probation" in the first line of the section, and substituted the personal pronoun "his" for "its" in the fourth line of the section.

Ch. 119, s. 65: Juvenile sessions

1. St. 1906, c. 413, s. 6, was the enacting statute for the section. It provided that courts shall designate suitable times for the hearing of cases of juvenile offenders and wayward or delinquent children, which will be called the session for children, and for which a separate docket and record will be kept. These sessions will be separate from that of the trial of criminal cases, and as far as practicable will be held in rooms not used for such trials. No minor shall be allowed to be present at a juvenile hearing unless his presence is necessary, either as a party or as a witness, or, in the opinion of the court, in the interests of justice.

2. St. 1916, c. 243, s. 2, rewrote the second sentence of the section and added some new material to the last sentence of the section. As rewritten, the second sentence provided that juvenile sessions will be separate from those for the trial of criminal cases, will not be held in conjunction with other business of the court, and will be held in rooms not used for criminal trials. In places where no separate juvenile court room is provided the hearings will, so far as possible, be held in chambers. The new material added onto the last sentence, provided that the court will also have the power to exclude the general public from juvenile sessions, admitting only such persons as may have a direct interest in the case.

Substantively, there were two changes produced by this enactment:

(1) that judges chambers could now be used for the separate trial of juvenile offenders; and,

(2) the general public, as well as minors would, as a general rule, be excluded from the session for children.

3. G.L. 119, s. 65 (1921 Revision). The 1921 revision substituted in the first line the phrase "cases of children under seventeen years of age" for the phrase "cases of juvenile offenders, and wayward or delinquent children," and tightened up some of the language of the section.

4. St. 1932, c. 217, made minor changes in the language of the section. In the first sentence the enactment substituted "juvenile session" for "session for children." In the second sentence the enactment inserted the phrase "except as otherwise provided," so that the first half of the second sentence would now read, "(s)aid session shall be separate from that for the trial of criminal cases, shall not, except as otherwise expressly provided, be held in conjunction with other business of the court, and shall be held in rooms not used for criminal trials."

5. St. 1932, c. 95, s. 2, added a sentence to the end of the section. This new sentence provided that a complaint under G.L. 119, s. 63, may be heard in the juvenile session.

Ch. 119, s. 66: Detention of children

1. St. 1906, c. 413, s. 3, paragraphs #3 and #4, was the enacting material for this section. Paragraph #3 provided that a child under fourteen years of age may not be committed to a lockup, police station, or house of detention, to a jail or house of correction, to the State Farm, or to the House of Correction at Deer Island, pending an examination, while in default of bail, or for the nonpayment of a fine (except as provided by St. 1906, c. 413, s. 5 & 9), or upon conviction of any offense not punishable by death or by imprisonment for life. Provided, that a boy twelve years or older, arrested in the act of violating a law of the Commonwealth, or on a warrant, may, at the discretion of the arresting officer, be committed to a lockup, police station, or house of detention.

   Paragraph #4 provided that whenever a child under seventeen years of age has been committed to a lockup, police station, or house of detention, the probation officer and at least one of its parents, and, if there is no parent, then the person with whom such child resides, shall be notified at once of said commitment. The officer of the place of custody in which such child is confined, on the written request of the probation officer, shall release the child to the probation officer unless the officer who made the commitment shall make a written request for his detention. The probation officer shall notify the child of the time and place of the hearing of its case.

2. G.L. 119, s. 66 (1921 Revision). The revision separated the last two paragraphs of St. 1906, c. 413, s. 3, from the first two paragraphs. The first two paragraphs were codified as G.L. 119, s. 54. The last two paragraphs were codified as G.L. 119, s. 66. The revision substituted a reference to "sections fifty-nine and sixty-seven" of Chapter 119 of the General Laws for a reference to "sections five and nine" of St. 1906, c. 413, s. 3, in the first paragraph of the section, and tightened up some of the language of the section.

3. St. 1941, c. 648, s. 2, rewrote the first paragraph of the section and made one change in the second paragraph.

   The first paragraph, as rewritten, provided that a child under seventeen, except when charged with an offense punishable by death or by life imprisonment, or with a sex crime, or as otherwise provided by G.L. 119, s. 59 or 67, shall not, pending an examination or trial or in default of bail, be committed to a lockup, police station or house of detention, to a jail or house of correction, or to the State Farm. Provided, however, that a boy between fourteen and seventeen arrested in the act of violating a law of the Commonwealth, or on a warrant, may, in the

discretion of the arresting officer, indeed be committed to a lockup, police station, or house of detention.

In the second paragraph, the enactment substituted "(w)henever a boy between fourteen and seventeen" for "(w)henever a child under seventeen years of age" in the first line of the paragraph. Notice the jurisdictional changes which were effectuated by this enactment:

(1) Instead of only a child under fourteen being subject to the limitations on detention contained in the first half of the paragraph, now any child under seventeen who has not committed an offense punishable by death or life imprisonment, or a sex crime, is also included.

(2) Instead of boys over twelve being subject to detention in a lockup, police station, or house of detention, if arrested on a warrant or if arrested while caught in the act of violating a law of the Commonwealth, only boys between fourteen and seventeen are now subject to this provision.

(3) Instead of the notice provisions of the second paragraph applying to any child under seventeen, they now apply only to any boy between the ages of fourteen and seventeen. Only boys between those ages can be held in the type of detention facilities that would trigger these notice requirements.

The wording of the first paragraph was also changed, but nothing else substantive other than the jurisdictional issues was altered thereby.

4. St. 1943, c. 244, s. 2, rewrote the section substantially, condensing the two paragraphs into one paragraph. As rewritten, the section provides that, except as otherwise provided by G.L. 119, s. 67 and G.L. 120, s. 12, no child under the age of seventeen shall be detained by the police in a lockup, police station, or house of detention pending arraignment, examination, or trial by the court. Except as otherwise provided by G.L. 119, s. 68, no child under seventeen years of age, except when charged with an offense punishable by death or by life imprisonment, shall be committed by the court to a jail, or house or correction, or the State Farm, pending further examination or trial by the court, or pending any continuance of the case, or pending the prosecution of an appeal to the superior court, or upon adjudication as a delinquent child.

Substantive changes included the following:

(1) The substitution of G.L. 119, s. 67, and G.L. 120, s. 12, for G.L. 119, s. 59 & 67, as providing exceptions to the general rule opposing detention of a juvenile in a lockup, police station, or house of detention.

(2) The elimination of the exception to the general rule against detention by police in adult facilities in the cases of juveniles charged with crimes punishable by death or by life imprisonment, or charged with a sex crime.

(3) The substitution of "arraignment, examination or trial" for "examination, trial, or default of bail," as an enumeration of those activities pending which a child may not be held in an adult facility.

(4) The elimination of the exception of the last half of the only sentence of the first paragraph (after the colon), providing that boys between fourteen and seventeen arrested on a warrant or arrested in the act of committing an offense against the Commonwealth could be detained in a lockup, police station, or detention home.

(5) The elimination of the provisions on notice, contained in the former second paragraph.

(6) The addition of a new sentence providing limitations on detention pending further examination or trial, continuance, or the prosecution of an appeal.

5. St. 1960, c. 353, s. 2, deleted the phrase "except when charged with an offense punishable by death or life imprisonment" from the 8th and 9th lines of the section as amended by St. 1943, c. 244, s. 2. As a consequence, no child under seventeen, regardless of what crime they were charged with, could thereafter be committed to a jail, house of correction, or the State Farm pending the final disposition of a case, unless the child fell within the exception of G.L. 119, s. 68. Section 68 provided at that time, in its second paragraph, that a child between fourteen and seventeen and unable to furnish bail could indeed be committed to a jail at the discretion of the court. This rather large loophole was closed off by the 1969 amendment to section 68.

6. St. 1978, c. 478, s. 61, substituted "juvenile appeals session" for "superior court" in the second sentence. This change was made because appeals were no longer being prosecuted in the superior court after the establishment of the juvenile appeals session as part of the reorganization of the trial system in 1978.

Ch. 119, s. 67: Notice of arrest; detention pending inquiry; etc.

1. St. 1906, c. 413, s. 5, paragraphs #2, 3, and 4, were the enacting paragraphs for this section. The first paragraph of this enactment was subsequently codified as G.L. 119, s. 56.

The first paragraph of the section (second paragraph of St. 1906, c. 413, s. 5) provided that a child under fourteen, who has been held for examination or trial, or to prosecute an appeal to the superior court, if unable to furnish bail, shall be committed to the State Board of Charity or to a probation officer. The person to whose care the child is committed shall provide for its safekeeping and its appearance at examination or trial, or at the prosecution of an appeal.

The second paragraph of the section provided that a child of fourteen or more years if held for examination or trial or to prosecute an appeal, if unable to furnish bail, may be committed to a probation officer, unless the court is of the opinion that if committed to a probation officer the child might not appear at examination or trial, in which case the child may be committed to jail.

The third paragraph of the section provided that the probation officer shall have the authority, rights, and powers, in relation to a child committed to his care or released to him, as provided in St. 1906, c. 413, s. 3, as he would have if he were surety upon the recognizance of the child.

2. G.L. 119, s. 67 (1921 Revision). The revision separated the last three paragraphs of St. 1906, c. 413, s. 5, from the first. The first paragraph was codified as G.L. 119, s. 56.

The revision tightened up some of the language of the section and made the following changes:

(1) It substituted "department" for "state board of charity" in the third line of the first paragraph. "Department" here refers to the Department of Public Welfare, which was the only relevant "department" in existence at the time.

(2) It substituted, in the third line of the third paragraph, the phrase "section sixty-six" for the phrase "section three." "Section sixty-six" refers to G.L. 119, s. 66, and "section three" referred to St. 1906, c. 413, s. 3, the relevant part of which was subsequently codified as G.L. 119, s. 66.

3. St. 1927, c. 221, added a new third paragraph, thereby changing the old third paragraph into the new fourth paragraph.

The new third paragraph provided as follows: a child committed to jail

to await examination or trial by the court must be returned to the court within three days after each commitment, and not more than ten days may elapse after the original commitment before final disposition of the case by the court. Any child committed to jail under this section shall, while so confined, be kept in a place separate and apart from all other persons committed to the jail who are seventeen years or older, and shall not at any time be permitted to associate or communicate with any such persons except when attending religious exercises or receiving medical attention and treatment.

4. St. 1931, c. 216, inserted, after "shall be so committed" in the second line of the second paragraph, the phrase "the department with its consent or to." Substantively, the enactment established that a child fourteen or older who is unable to furnish bail may be committed not only to a probation officer, but also to the Department of Public Welfare if the Department consents.

5. St. 1931, c. 284, s. 1, amended the first sentence of the third paragraph of the section, which had been inserted by St. 1927, c. 221. As amended the first sentence provided that a child committed to jail to await examination or trial by the court shall be returned to the court within ten days after each such commitment, and not more than twenty days shall elapse after the original commitment before final disposition of the case by the court.

Substantively, the enactment substituted ten days for three days and twenty days for ten days as the operative time periods regarding return of a detained child to court and final disposition of a case.

6. St. 1941, c. 649, s. 3, added a second sentence to the second paragraph. The second paragraph had previously established what happens to a child of fourteen or older who cannot furnish bail. The new sentence provided that the Department of Public Welfare shall be allowed such sums as may be necessary to provide additional special foster homes, special supervisors and transportation facilities for the care, maintenance and safekeeping of children fourteen years of age or older who may be committed to the Department under this section; provided that no more than five such children shall be detained in any such foster home at any one time.

7. St. 1943, c. 244, s. 2, completely rewrote the section as it then existed. Much of the material originally contained in G.L. 119, s. 67 was transplanted into G.L. 119, s. 68, the then-existing material from which was in turn transplanted into G.L. 119, s. 69. The material that was existing in G.L. 119, s. 69 at the time, serves as the foundation for the new G.L. 119, s. 67, as enacted here by St. 1943, c. 244, s. 2.

As enacted in 1943 the new G.L. 119, s. 67 provided as follows: whenever a child between seven and seventeen is arrested with or without a warrant, the officer in charge of the place of custody to which the child has been taken shall immediately notify the probation officer of the district court within whose judicial district the child was arrested, and at least one of the child's parents, and if there is no parent, the guardian or the person with whom it is stated that the child resides. The probation officer shall then inquire into the case. Pending such notice and inquiry, the child shall be detained. Upon acceptance by the officer in charge of the place of custody of the written promise of a parent, guardian, or other reputable person to be responsible for the presence of the child in court at the time and place of the hearing, or upon the receipt by the officer in charge of a written request from the probation officer for the release of the child to him, the child shall be released to the probation officer or parent, guardian, or other reputable person making the request. Provided, however, that if the arresting officer requests in writing that a boy between twelve and seventeen or a girl between fourteen and seventeen be detained, or if the court

or trial justice issuing an arrest warrant for a boy or girl between the same ages directs the detention of the child, then the child shall be detained in a police station or house of detention pending his or her appearance in court. Provided further that nothing in this section shall prevent the admitting of a child to bail in accordance with law. The probation officer shall notify the child of the time and place of the hearing of his or her case.

Comparing the new section 67 with the pre-1943 section 69, its real predecessor section, notice the following differences between the two sections:

(1) The pre-1943 version of s. 69 had no provisions on notice to or release of a child to a probation officer. Notice, in the case of a warrantless arrest or an arrest on a warrant went to the parent, guardian, person with whom the child resides, or any other reputable person.

(2) The pre-1943 version of s. 69 also allowed release to the parent or guardian, etc., upon the written promise of such party to be responsible for the appearance of the child at the hearing, except when the court directed in its arrest warrant that the child be detained. The 1943 version of s. 67 here also allowed for the continued detention of the child upon the written request of the arresting officer.

(3) The pre-1943 version of s. 69 did not contain any of the limiting language regarding the twelve to seventeen age limit for boys, and the fourteen to seventeen age limit for girls. Thus, under the pre-1943 version of s. 69 any child between seven and seventeen could be incarcerated at the request of the court issuing the arrest warrant.

(4) The pre-1943 version of s. 69 is not specific about where a detained child may be incarcerated.

(5) The last sentence of the 1943 version of s. 67, regarding notification by the probation officer of the child's time and place of hearing, is new.

8. St. 1955, c. 609, makes minor changes in the existing section, as amended most recently by St. 1943, c. 244, s. 2, and then adds several sentences to the end of the section. The changes include:

(1) The substitution, in several instances, of the phrase "officer in charge of the police station or town lockup" for the phrase "officer in charge of said place of custody."

(2) The substitution, in the third sentence of the section, of the phrase "police station or town lockup, house of detention, or place of temporary custody commonly referred to as a detention home of the division of youth service, or any other home approved by the youth service board" for the phrase "police station or house of detention."

(3) The insertion, in the third sentence of the section, of the following clause: "and that in the event any such child is so detained, the officer in charge at the police station or town lockup shall notify the probation officer and parent or parents, guardian, or other person with whom it is stated that such child resides, of the detention of such child."

The new sentences begin with a new fourth sentence, and total four in number. They provide that the probation officer or officer in charge at the police station or town lockup shall notify the child, his parents, guardian, or the person with whom it is stated that the child resides, of the time and place of the hearing of his case. No child between fourteen and seventeen shall be detained in a police station or town lockup unless the detention facilities for children there, have received the written approval of the Division of Youth Service. The Division shall make inspection at least annually of police stations or town lockups wherein

children are detained. Where no such approved detention facilities exist in a city or town, such city or town may contract with an adjacent city or town for the use of approved detention facilities in order to prevent children who are detained from coming into contact with adult prisoners. Nothing herein shall permit a child between fourteen and seventeen coming into contact with adult prisoners, and a separate and distinct place shall be provided in police stations, town lockups, or places of detention for such children.

9. St. 1969, c. 838, s. 17, enacted the following changes:

(1) It took the third sentence of the section and divided it into three sentences. No substantive changes were made.

(2) It substituted "commissioner of youth services" for "division of youth services" in the former fourth sentence, and substituted "department of youth services" for "division of youth services" in the former fifth sentence of the section.

10. St. 1978, c. 478, s. 62, inserted in the first sentence after the words "district court" the phrase ", or of the juvenile court, if there is one." In effect, where there is a juvenile court, the probation officer of the juvenile court must now be notified instead of the probation officer of the district court.

Ch. 119, s. 68: Commitment of children

1. St. 1906, c. 489, s. 8 was the enacting statute for this section. The section was later renumbered as G.L. 119, s. 69, in the enactments of St. 1943, c. 244, s. 2. Originally, St. 1906, c. 489, s. 8 provided as follows: it shall be the duty of the Superintendent of the Boston Public Schools, and of any teacher therein, and of the person, society or corporation in charge of any private school, and of the teachers therein, to furnish to the court from time to time any information and reports requested by the justice thereof relating to the attendance, conduct and standing of any pupil under his charge, if said pupil is at the time under the charge of the court hereby established.

2. St. 1918, c. 257, s. 419, provided that the enactment of St. 1906, c. 489, s. 8, shall apply to all the schools within the Commonwealth (This enactment also provides that St. 1906, c. 489, s. 7, which is part of the act establishing the Boston Juvenile Court, would apply to all the courts of the Commonwealth). This enactment is not a direct amendment of the language of St. 1906, c. 489, s. 8.

3. G.L. 119, s. 68 (1921 Revision). The revision incorporated the effect of St. 1918, c. 257, s. 419, supra, and rewrote the section to provide that the superintendent of the public schools of any town, and any teacher therein, and any person in charge of any private school, or any teacher therein, shall furnish to any court from time to time any information and reports requested by any justice relating to the attendance, conduct, and standing of any pupil under his charge, if the pupil is at that time in the charge of the court.

4. St. 1943, c. 244, s. 2, took the material that had formerly made up G.L. 119, s. 67, and transferred it into this section, while taking the material that had formerly made up this section and transferring it to G.L. 119, s. 69.

Changes between the old section 67 and the new section 68 include the following:

(1) The new section 68 substituted "child between seven and fourteen" for "child under fourteen" in the first line of the first paragraph, substituted "between fourteen and seventeen years of age" for "fourteen years of age or over"

in the first line of the second paragraph, and substituted "between fourteen and seventeen years of age" for "fourteen years of age or over" in the new third paragraph (second sentence of the old second paragraph of section 67).

(2) The second sentence of the second paragraph of the old section 67 is turned into an independent new paragraph in the new section 68.

(3) The new section 68 substituted "such child should be committed to jail" for "if so committed, such child will not appear at such examination or trial," in the first sentence of the second paragraph.

(4) The new section 68 revised the old third and now new fourth paragraph substantially, so that the paragraph now provided that a child between seven and seventeen committed by the court to jail or to the Department of Public Welfare to await further examination or trial by the Boston Juvenile Court or by a district court shall be returned to the court within fifteen days of the order of commitment, and final disposition shall thereupon be made by adjudication or otherwise, unless, in the opinion of the court, the interests of the child and the public otherwise require. Differences between the new fourth paragraph and the old third paragraph include: (a) that the new fourth paragraph institutes one period of fifteen days after initial commitment by which time final disposition of the case must be achieved, whereas the old third paragraph had separate periods of ten days after the initial commitment by which time the juvenile must be returned to the court for a recommitment, and twenty days after initial commitment by which time final disposition of the case had to be achieved; (b) that the new fourth paragraph specifically mentions the Boston Juvenile Court; and (c) that the new fourth paragraph contains the proviso that the requirements of this section may be overriden in cases where the interests of the child and of the public require that they be overriden.

(5) The new section 68 took the second sentence from the old third paragraph of section 67 and made it into a new fifth paragraph. There were no changes in the actual language, however.

(6) The new section 68 enacted an entirely new paragraph, not the sixth paragraph, which provided that the provisions of G.L. 212, s. 24, relative to the precedence of cases, shall apply to children held in jail, under this section, to prosecute appeals to the superior court.

(7) The old fourth paragraph of section 67 now became the new seventh paragraph of section 68. There were no substantive changes.

Notice that all the changes enacted here were largely cosmetic, with the exception of the revisions of the new fourth paragraph and the addition of the new sixth paragraph of s. 68.

5. St. 1948, c. 310, s. 8, substituted "youth service board" for "department of public welfare" in the fifth line of the first paragraph and the first line of the third paragraph, as amended by St. 1943, c. 244, s. 2.

Substantively, this resulted in the Youth Service Board, created in 1948, taking over the functions of the Department of Public Welfare relative to the care and commitment of children held for examination or trial.

6. St. 1955, c. 609, s. 2, made the following changes in the existing section, as amended by St. 1948, c. 310, s. 8:

(1) It substituted a reference to the "youth service board" with a reference to the newly created "division of youth service" in the third line of the third paragraph. Notice, however, that the enactment left intact individual references to the "youth service board" in all three of the first paragraphs of the section,

and even inserted a fourth reference in new material added to the fourth paragraph.

(2) It changed a colon into a comma in the seventh line of the fourth paragraph, before the word "unless."

(3) It added two new sentences to the fourth paragraph. These provided that if the opinion of the court is that these cases should be further continued and the child committed to the Youth Service Board, the commitment pending each further continuance must be with the consent of the Board except in those cases where the child was under the age of fourteen at the time of the original commitment, and provided further that unless the hearing, finding, or final disposition is to take place at the end of the expiration of the continuance as herein provided, the child need not be returned to the court by the Youth Service Board. In this case the court shall notify the Youth Service Board or the person having custody of the child, and the parent, that the child need not be present in court for the further continuance.

7. St. 1956, c. 269, added the final clause to the only sentence of the last paragraph. That clause provided that the appearance at examination or trial or at the prosecution of an appeal of (1) a child between seven and fourteen held by the court under the provisions of sections 73 to 83, or (2) a child between fourteen and seventeen detained with the consent of the Youth Service Board, shall be the responsibility of the court for which the child is being held in safekeeping.

8. St. 1969, c. 838, s. 18, made the following changes in the section:

(1) It eliminated the former second paragraph of the section, which had provided that a child between fourteen and seventeen who was unable to furnish bail could be committed to the Youth Service Board, a probation officer, or in certain cases to jail.

(2) It substituted "department of youth services" for "youth service board" in the former first and fourth paragraphs and now the first and third paragraphs of the section, and substituted "department of youth service" for "division of youth service" in the former third and present second paragraph of the section.

(3) It completely revised the two sentences added by St. 1955, c. 609, s. 2, to the former fourth paragraph and present third paragraph of the section. The revised material provided that if the case is continued further and the child is committed to the Department of Youth Services, then the commitment pending such further continuance may in no event be ordered for a period which, when added to all prior commitments for the preceeding six months, shall exceed thirty days. The final disposition shall take place at the expiration of such further continuance, except in those cases where a child is held in detention on default of bail on appeal to the superior court, or in those cases where the court makes a written finding of fact that such further continuance is in the best interest of the child and the public.

The most interesting innovation of this enactment is the provision limiting the total time a child may spend in detention, in any one six month period, to thirty days.

9. St. 1969, c. 859, s. 12, rewrote the entire third paragraph of the section as it appeared in St. 1969, c. 838, s. 18, supra. This included changing the last sentence of the paragraph as just recently enacted by St. 1969, c. 838, s. 18. As rewritten, the entire third paragraph provided that a child between seven and seventeen committed by the court to jail or to the Youth Service Board to await further examination or trial in the Juvenile Courts of Boston, Worcester, and Springfield, a district court, or a superior court, shall be returned thereto

within fifteen days after the date of the order of such commitment, and final disposition shall thereupon be made by adjudication or otherwise, unless in the opinion of the court, the interests of the child and the public otherwise require.

Notice that the revised paragraph streamlines some of the language of the existing paragraphs and adds references to the Worcester and Springfield Juvenile Courts. It deletes outright the material added by St. 1969, c. 838, s. 18 regarding limitations on total detention in any six month period.

This enactment of St. 1969, c. 859, s. 12 contained two technical errors which were repeated in the subsequent enactment of St. 1972, c. 731, s. 12. These errors are (a) a reference to the Youth Service Board, which had been renamed the Division of Youth Services in 1952 and the Department of Youth Services in 1969, and (b) an apparent typographical error which read "a district court of the superior court" when it should have read "a district court or the superior court."

10. St. 1972, c. 731, s. 12, amended the third paragraph of the section as amended by St. 1969, c. 859, s. 12, to include, in the fourth line, a reference to the Bristol County Juvenile Court.

The two technical errors of 1969, c. 859, s. 12, discussed supra, were repeated in this enactment.

11. St. 1978, c. 478, s. 63, substituted "juvenile appeals session" for "superior court" in the first, third, and fourth paragraphs of the section, and substituted "section seventy-two A" for "section seventy-three" in the fourth paragraph.

This amendment contained another technical discrepancy. It substituted a reference to G.L. 119, s. 72A for s. 73 in the fourth paragraph, but maintained a reference to s. 73 in the first paragraph. G.L. 119, s. 73 was repealed in 1964.

Ch. 119, s. 68A: Diagnostic study

1. St. 1955, c. 609, s. 3 was the enacting statute for this section. It provided that a child between seven and seventeen years of age held by the court for further examination, trial or continuance, or for indictment and trial under the provisions of sections 73 to 83 of Chapter 119, or to prosecute an appeal to the superior court, may at the discretion of the court be referred to the Youth Service Board with its consent, and with the consent of the parents or guardian, for diagnostic study on an outpatient basis. Upon completion of such a study the Board shall forward a report and recommendations to the court. If in default of bail, a child may be committed by the court to the Youth Service Board with its consent, for a period not to exceed thirty-five days while undergoing diagnostic study. At the expiration of this period the child will be returned to the court with the report and recommendations of the Youth Service Board.

2. St. 1969, c. 838, s. 19, made the following changes in the section:

(1) In the fifth and ninth line of the section, it substituted "department of youth services, any court clinic, or the department of mental health" for "youth service board" and "board" respectively.

(2) In the eighth line of the section it substituted "inpatient or outpatient basis" for "outpatient basis."

(3) In twelfth and sixteenth lines of the section it substituted "department of youth services" for "youth service board."

(4) In the thirteenth line of the section it substituted "thirty days" for "thirty-five days," thereby reducing the length of time that a child in default of bail could be committed to the Department for diagnostic study.

3. St. 1978, c. 478, s. 64, substituted, in the fourth line, "a juvenile appeals session" for "the superior court." This change was made because subsequent to the enactment of this statute appeals of delinquency adjudications were no longer prosecuted in superior court.

Ch. 119, s. 68B: Special foster homes and detention homes

1. St. 1955, c. 609, s. 3 was the enacting statute for this section. It provided as follows: The Youth Service Board may use or provide special foster homes, and places of temporary custody commonly referred to as detention homes, at various places in the Commonwealth. These facilities shall be completely separate from any police station, town lockup, or jail, and shall be used solely for the temporary care, custody, and study of children committed to the care of the Board. The director of the Division of Youth Service may at his discretion transfer any child thus committed from any foster home or detention home to another foster home or detention home.

Notice that this enactment refers to both the "youth service board," in the first line, and to the "division of youth services" in the eighth line of the section.

2. St. 1969, c. 838, s. 20, made the following changes:

(1) It substituted "department of youth services" for "youth service board" and "board" in the first and sixth lines of the section respectively.

(2) It substituted "commissioner of youth services" for "director of the division of youth services" in the seventh line of the section.

Ch. 119, s. 68C: Diagnostic services

1. St. 1955, c. 609, s. 3, was the enacting statute for this section. It provided as follows: the Youth Service Board shall maintain and provide diagnostic services for the purpose of providing the diagnostic studies and making the reports and recommendations provided for under G.L. 119, s. 68A. The Youth Service Board may provide offices and facilities for such diagnostic services, at such places in the Commonwealth as will best serve the needs of the several courts.

2. St. 1969, c. 838, s. 21, substituted, in the first line, "department of youth services" for "youth service board," and in the fourth line, "department" for "board."

Ch. 119, s. 69: Information and reports of superintendents and teachers

1. St. 1906, c. 489, s. 7, was the enacting statute for this section. As originally enacted this section dealt with proceedings to avoid incarceration. In the 1921 codification of the General Laws this enactment was codified as G.L. 119, s. 69, but in the enactment of St. 1943, c. 244, s. 2, the material of this section was transferred to G.L. 119, s. 67. Likewise, the material originally contained in G.L. 119, s. 68 was transferred here to s. 69.

As originally enacted, St. 1906, c. 489, s. 7 provided as follows: in the case of a warrant issued by a court for a child's arrest, or in the case of a child between the ages of seven and seventeen who is arrested without a warrant, in order to avoid the incarceration of the child, if practicable, the officer to whom the warrant is delivered or who has made the warrantless arrest may, unless the court issuing the warrant has otherwise directed in the warrant, accept the written promise of the parent, guardian, or person with whom it is stated that the child resides, or any other reputable person, to be responsible for the presence of the child in court at the time and place when the child is to appear, and

at any other time to which the hearing may be continued or adjourned by the court. Nothing contained in this section shall be construed to prevent the admitting of the child to bail, in accordance with R.L. (1902) c. 217, s. 29 & 30.

2. St. 1908, c. 286, s. 1, was an enactment relative to the release of certain minors after arrest, and it did not amend any of the language of St. 1906, c. 489, s. 7. It appears, for the most part, to simply reiterate the provisions of St. 1906, c. 489, s. 7, in somewhat different language, without adding any new substantive provisions. The enactment provided as follows: any child between the ages of seven and seventeen who has been arrested with or without a warrant may, unless the justice or magistrate of the court issuing the warrant directs otherwise, be released by the officer to whom the warrant is delivered, upon the written promise of the parent, guardian, or any other reputable person, to be responsible for the appearance of the child at the time and place when the child is to appear, and at any other time to which the hearing in the case may be continued or adjourned by the court.

3. St. 1918, c. 257, s. 419 was an enactment that stated simply that St. 1906, c. 489, s. 7 shall apply throughout the Commonwealth and to all the courts within the Commonwealth. This was not an amendment of any specific language of St. 1906, c. 489, s. 7, or any other section. As incorporated by the 1921 revision of G.L. 119, s. 69, the effect of this enactment was not noticeable in terms of changing the substance of St. 1906, c. 489, s. 7. By contrast, this enactment (St. 1918, c. 257, s. 419) did change the substance of G.L. 119, s. 68 (1921 Revision) by making the provisions of that section applicable to all the public schools of the Commonwealth instead of only the Boston Public Schools. See the discussion under Ch. 119, s. 68.

4. G.L. 119, s. 69, (1921 Revision). The revision tightened up some of the language of St. 1906, c. 489, s. 7, and substituted, in the last lines of the section, a reference to G.L. (1921) c. 276, s. 29 & 20 for a reference to R.L. (1902) c. 217, s. 29 & 30. Otherwise, the 1921 revision made no substantive changes.

5. St. 1943, c. 244, s. 2, transferred the material originally codified as G.L. 119, s. 68 in the 1921 revision into s. 69, and transferred the material previously residing in s. 69 into s. 67.

The 1943 version of section 69 repeated the provisions of the 1921 version of section 68 almost verbatim. The only changes were (1) the substitution of "any pupil enrolled in such school" for "any pupil under his charge" in the fifth line of the section, and (2) the substitution of "awaiting examination and trial by the court or is under the supervision of the court" for "in charge of the court" in the last line of the section.

The 1943 version of section 69 thus provided that the superintendent of the public schools in any town, or any teacher therein, and any person in charge of a private school or any teacher therein, must furnish to any court, information and reports relating to the conduct, attendance, and standing of any pupil enrolled in such school if the pupil is at the time awaiting examination or trial by the court, or is under the supervision of the court.

Ch. 119, s. 69A: Information with respect to committed child

1. St. 1948, c. 310, s. 9, was the enacting legislation for this section. It provided that when a person has been committed to the Youth Service Board, the court, the probation officers, and other public and police authorities, the school authorities, and other public officials shall make available to the Youth Service Board all pertinent information in their possession in respect to the case.

2. St. 1969, c. 838, s. 22, substituted "department of youth services" for "youth service board" in the second and third lines of the section, and substituted "department" for "board" in the fifth line of the section.

Ch. 119, s. 70: Summoning of parent or guardian

1. St. 1907, c. 195, s. 1, was the enacting statute for this section. It provided that if, at any time during the pendency of any case before any court or magistrate against a child under seventeen years of age, whether it be pending adjudication or during continuance or probation, or after the case has been taken from the files, the court or magistrate desires the presence of any parent or guardian of said child, or any person with whom the child resides, the court or magistrate may summon the parent, guardian, or person, in the manner provided by St. 1906, c. 413, s. 4.

2. G.L. 119, s. 70 (1921 Revision). The revision tightened up the cumbersome language of this section considerably, and substitutes a reference to section 55 of Chapter 119 for the reference to St. 1906, c. 413, s. 4.

Ch. 119, s. 71: Failure to appear on summons

1. St. 1907, c. 195, s. 2, was the enacting statute for this section. It provided that if any person to whom a summons is issued under (1) the preceeding section, (2) St. 1906, c. 413, s. 4, or (3) St. 1903, c. 334, s. 1, fails to appear on the summons, the court or magistrate which issued the summons may then issue a capias to compel the attendance of such person, and such capias shall be issued and served in the same manner as a capias to compel the attendance of witnesses who have failed to appear on a subpoena issued in behalf of the Commonwealth in a criminal case.

2. G.L. 119, s. 71 (1921 Revision). The 1921 revision tightened up the language of the enacting statute, and substitutes a reference to section 42 and section 55 (of Chapter 119) for the reference to St. 1906, c. 413, s. 4, and St. 1903, c. 334, s. 1.

Ch. 119, s. 72: Jurisdiction of courts in their juvenile sessions continued

1. St. 1907, c. 411, s. 1 was the enacting statute for this section. It provided that the Boston Juvenile Court shall have the same powers and authority over all children who become seventeen years of age pending the adjudication of their cases, or during continuance or probation, or after their cases have been placed on file, which it would have had prior to their becoming seventeen years of age. Provided, that nothing in this section shall be construed to authorize the commitment of any child over seventeen to the State Industrial School for Girls, and that nothing in this section shall give the Boston Juvenile Court any power or authority over children after they become eighteen.

2. St. 1918, c. 257, s. 418, made a number of substantive amendments to the provisions of St. 1907, c. 411, s. 1. These include:

(1) The expansion of the jurisdiction of this section to include not only the Boston Juvenile Court, but any police, district, and municipal court, and trial justices as well.

(2) The substitution of the word "may" for "shall" in referring to the courts' power to continue to exercise jurisdiction over juveniles who turn seventeen in their juvenile session.

(3) The addition of two new sentences at the end of the section which provide as follows: on the revocation or suspension of the execution of a sentence

or order of commitment, such sentence or order of commitment may be executed, notwithstanding that the child sentenced or ordered committed has passed the age limit for commitment to the institution to which he was sentenced or ordered committed. All acts and parts inconsistent with this enactment are hereby repealed.

3. G.L. 119, s. 72 (1921 Revision). The 1921 revision tightened up some of the language of the section and made the following changes:

(1) It substituted in the first line the word "(c)ourts" for the phrase "(p)olice, district and municipal courts, the Boston juvenile court and trial justices."

(2) It eliminated the last sentence of St. 1918, c. 257, s. 418, which had provided for the repeal of all acts or parts of acts inconsistent with that enactment.

4. St. 1947, c. 235, added a long passage to the first sentence after the words "on file" in the fifth line of the section. The passage provided, in effect, that courts may also continue to exercise jurisdiction in their juvenile session over a child between the ages of sixteen and seventeen who commits an offense and is not apprehended until after reaching the age of seventeen. In such cases the court may deal with the child as if he or she had not reached age seventeen, and all the provisions and rights applicable to a child under seventeen shall apply to the child.

Substantively this amendment simply provided a new category of over-sixteen year olds who may be dealt with as juveniles, namely those who have committed a crime between their sixteenth and seventeenth birthdays, but were not apprehended until after they turned seventeen. The court could continue to exercise jurisdiction in any case over a child who had turned seventeen and whose case was already in progress, either pending adjudication, during continuances or probation, or after the case had been placed on file.

5. St. 1948, c. 310, s. 10, made the following changes in the section as most recently amended. These included:

(1) The substitution, at the beginning of the second sentence of the passage "(n)othing herein shall authorize the commitment of any child over seventeen years of age to the youth service board" for the passage, "(n)othing herein shall authorize the commitment of any girl over seventeen years of age to the industrial school for girls."

(2) The substitution, in the last line of the section, or "youth service board" for "institution."

Substantively, the enactment expanded the limitation on commitment of girls over seventeen to include a limitation on commitment of girls or boys over seventeen, and made it clear that henceforth commitments would be to the custody of the Youth Service Board instead of to an individual training school.

6. St. 1949, c. 595, added a passage to the last sentence of the section. The new passage provided that when a child commits an offense between his sixteenth and seventeenth birthdays, but is not apprehended until after his seventeenth birthday, then the court may commit him to the custody of the Youth Service Board or to "any other institution" to which he might be committed by law.

This amendment thus operated to establish a second exception to the general rule that no child over seventeen may be committed to the custody of the Youth Service Board. The existing exception was that a child over seventeen could be committed upon the revocation of the suspension of an order of commitment. The new exception deals with children not apprehended until after their seventeenth birthday.

7. St. 1964, c. 308, s. 3, rewrote the section substantially, making the following changes:

(1) In the first line of the section it added a reference to the superior court on appeal. In effect the superior court is now explicitly included as one of the courts that may continue to exercise jurisdiction in their juvenile sessions over children who pass age seventeen under the provisions of this section.

(2) Also in the first line, the enactment substituted "shall" for "may," thereby removing the discretionary aspect of this continuance of juvenile jurisdiction. Notice that this reverses the substitution of "may" for "shall," as enacted by St. 1918, c. 257, s. 418, discussed supra.

(3) In the third and fourth lines of the section, the passage reading "or who pass the age limit for bringing the kind of complaint or proceeding before the court" has been deleted.

(4) It deleted the two exceptions to the general rule of the second sentence, including the exception enacted by St. 1949, c. 595. As amended the sentence now provides that nothing in this section shall authorize the commitment of a child to the Youth Service Board after he has attained his eighteenth birthday, or give any court in its juvenile session any power or authority over a child after he has attained his eighteenth birthday, with no exceptions.

(5) It rewrote the last half of the first sentence, added by St. 1947, c. 235. As rewritten the last half of the sentence now provided, "and if a child commits an offense prior to his seventeenth birthday, and is not apprehended until between his seventeenth and eighteenth birthdays, the court shall deal with such child in the same manner as if he had not reached his seventeenth birthday, and all provisions and rights applicable to a child under seventeen shall apply to such child."

As added by St. 1947, c. 235, the same sentence used to provide as follows: "or where a child between the ages of sixteen and seventeen commits an offense and is not apprehended until after reaching the age of seventeen the court may deal with said child in the same manner as if he or she had not reached the age of seventeen, and.all provisions and rights applicable to a child of under seventeen shall apply to said child."

Notice that under the 1964 version the child must be apprehended between his seventeenth and eighteenth birthdays, whereas under the 1947 version the child must have committed the offense between his sixteenth and seventeenth birthdays.

8. St. 1969, c. 838, s. 23, substituted, in the second sentence of the paragraph, "department of youth service" for "youth service board."

9. St. 1978, c. 478, s. 65, deleted from the first line the phrase "including the superior court on appeal." This phrase had been inserted by the enactment of St. 1964, c. 308, s. 3.

Ch. 119, s. 72A: Proceedings upon apprehension after eighteenth birthday

1. St. 1964, c. 308, s. 4, was the enacting statute for this section. It provided as follows: the case of any person who commits an offense prior to his seventeenth birthday, and who is not apprehended until after his eighteenth birthday, shall be heard and determined in accordance with G.L. 119, s. 53 to 63 inclusive. In any such case, the court, in its discretion and after a hearing on the complaint, shall either order the person discharged, if satisfied that such discharge is consistent with the protection of the public, or shall order that the complaint be dismissed, if the court is of the opinion that the interests of the public require that the person be criminally tried for the offense or violation instead of being discharged.

2. St. 1975, c. 840, s. 2, made two changes in the text of the section.

(1) The enactment added, in the second sentence a passage which provides in essence that in any case of a juvenile who is not apprehended until after his eighteenth birthday, the court, after a hearing, must determine whether there is probable cause to believe that the accused person committed the offense as charged, before the court may make a decision on whether to discharge the accused or whether to dismiss the complaint.

(2) The enactment added a final sentence, which provided that the probable cause hearing must be held prior to and separate from any trial on the merits of the charges alleged.

Ch. 119, s. 73: Jurisdiction of courts (repealed)

1. R.L. (1902) c. 86, s. 10, was the section of the 1902 revision of the then-existing juvenile code which was eventually recodified as G.L. 119, s. 73 in 1921. This section provided that boys under fifteen may be committed to the Lyman School by police, district, and municipal courts and trial justices, and except in the County of Suffolk, by judges of probate. Girls under seventeen may be committed to the Industrial School by the same courts, judges and justices except as aforesaid, and except in the County of Suffolk, by commissioners.

2. St. 1908, c. 639, s. 3, was part of the act establishing the Industrial School for Boys. Section 3 provided, in pertinent part, that if it appears to any police, district or municipal court or trial justice that any boy not less than fifteen who has been adjudged to be a delinquent child, or any boy of not less than fifteen or more than eighteen who has been convicted of any offense punishable by imprisonment other than imprisonment for life, is a suitalbe subject for the Industrial School, and that his welfare and the good of society require that he should be sent thereto for industrial training, instruction, and reformatory treatment, the court may then issue a warrant of commitment to the Industrial School. So far as they are applicable, except as herein otherwise provided, all provision of law in relation to commitments to the Lyman School shall extend to commitments to the Industrial School. A boy committed to the Industrial School may be held therein until he reaches the age of twenty-one, and the custody of such boy shall be in the trustees until that age is attained, except during the time that he shall be absent from the school in the Massachusetts Reformatory. The trustees may release from the school on probation any inmate thereof, and may recall him from probation. They may employ agents as may be required for the care of such probationers.

3. G.L. 119, s. 73 (1921 Revision). The revision amended R.L. (1902) c. 86, s. 10, substantially. In the process it incorporated some of the enactment of St. 1908, c. 639, s. 3.

As rewritten the 1921 revision of section 73 provides that in criminal proceedings under sections 74 to 83, district courts and trial justices may commit boys under fifteen to the Lyman School, boys between fifteen and eighteen years of age to the Industrial School for Boys, and girls under seventeen years of age to the Industrial School for Girls, except that the Boston Juvenile Court shall, subject to section 72, commit no boy over seventeen to the Industrial School for Boys. The Municipal Court for the City of Boston may however commit boys over seventeen to the Industrial School for Boys.

Differences between G.L. (1921) 119, s. 73 and R.L. (1902) 86, s. 10 include:

(1) The provisions on the commitment to the Industrial School for Boys.

(2) The provisions regarding commitment of boys over seventeen by the Boston Juvenile and Municipal Courts.

(3) The substitution of district courts and trial justices for police, district, and municipal courts, trial justices, judges of probate, and commissioners, as courts having jurisdiction under this section. Notice that municipal courts and the Boston Juvenile Court are apparently subsumed in the definition of district court in G.L. 119, s. 73.

4. St. 1945, c. 202, amended the section in the following ways:

(1) It eliminated the provisions regarding the Boston Juvenile and Municipal Courts in lines five through nine.

(2) It inserted, in its stead, after the words "district courts" in the second line, the phrase "other than the municipal court of the city of Boston, the Boston juvenile court and trial justices." The Boston Juvenile and Municipal Courts, as well as trial justices, thereby lost the jurisdiction to commit any child under the age of seventeen who had been convicted in criminal proceedings to one of the training schools. District courts, excluding from that definition the Boston Juvenile and Municipal Courts, had however retained such jurisdiction.

5. St. 1948, c. 310, s. 11, amended the section to change the last half of the sentence. As rewritten the sentence provided in effect that the appropriate courts could commit children under seventeen to the custody of the Youth Service Board, but could not commit such children to the Lyman School or one of the Industrial Schools.

Notice that St. 1948, c. 310 was the act that established the Youth Service Board. Once established, no court could commit a child adjudicated delinquent or wayward, or one convicted of a crime before a district court or trial justice, directly to a training school. Instead all commitments had to be made to the Youth Service Board, which had the discretion to place a child so committed to a training school as its administrators saw fit.

6. St. 1964, c. 308, s. 5, repealed G.L. 119, s. 73 in its entirety.

Ch. 119, s. 74: Limitation on criminal proceedings against children

1. St. 1906, c. 413, s. 11 was the enacting statute for this section. As codified by the 1921 revision of the General Laws, St. 1906, c. 413, s. 11 was broken up into two sections. The first sentence of the enactment was codified as G.L. 119, s. 61. The second sentence of the enactment was codified as G.L. 119, s. 74. That sentence provided that criminal proceedings shall not be begun against any child between the ages of seven and fourteen, except for an offense punishable by death or by imprisonment for life, unless proceedings against the child as a delinquent have been begun and dismissed as aforesaid.

2. G.L. 119, s. 74 (1921 Revision). The 1921 revision divided St. 1906, c. 413, s. 11 into two sections and substituted "begun and dismissed as required by section sixty-one" for "begun and dismissed as aforesaid" in the last line of the sentence.

3. St. 1933, c. 196, s. 1, amended the section by substituting "between seven and seventeen" for "between seven and fourteen" in the second line of the section. The provisions of this section, requiring dismissal of delinquency complaints against any child not charged with an offense punishable by death or life imprisonment, had thus been expanded to include children between fourteen and seventeen, instead of restricting themselves only to children between seven and fourteen.

4. St. 1948, c. 310, s. 12, made two important changes in the text of the section:

(1) It substituted, in the second line, "between fourteen and seventeen" for "between seven and seventeen."

(2) It deleted from the fourth line the phrase "or for imprisonment for life."

Subsequent to this enactment, the situation with regard to the institution of criminal proceedings against children under seventeen was as follows:

(1) No child between seven and fourteen, unless he was charged with an offense punishable by death, could be subject to the institution of criminal proceedings subsequent to the dismissal of a delinquency complaint, regardless of the crime the child had allegedly committed. In contrast, prior to this enactment any child between the ages of seven and seventeen could have criminal charges instituted against it subsequent to the dismissal of a delinquency complaint, and any child charged with committing an offense punishable by life imprisonment would automatically be tried criminally before a superior court.

(2) A child between the ages of fourteen and seventeen charged with an offense punishable by life imprisonment now had to have a delinquency complaint brought and dismissed against him before he could be tried criminally before a district court or trial justice. Only if those courts determined that the child was not a suitable subject for commitment to the Youth Service Board could the child then be transferred to stand trial before the superior court. Prior to this enactment, any child between seven and seventeen charged with an offense punishable by life imprisonment would automatically be tried before a superior court.

5. St. 1960, c. 353, s. 3, struck out the words "except for offenses punishable by death" in the third line of the statute. In effect, no criminal proceedings could hereinafter be begun against any child between the ages of fourteen and seventeen without first having delinquency proceedings against him instituted and dismissed as required by Ch. 119, s. 61. No criminal proceedings could be begun against any child under fourteen under any circumstances.

6. St. 1964, c. 308, s. 6, made the following changes in the section:

(1) It substituted the phrase "any person who prior to his seventeenth birthday commits an offense against the law of the Commonwealth or who violates any city ordinance or town by-law" for the phrase "any child between fourteen and seventeen years of age."

(2) It added a reference to Ch. 119, s. 72 at the end of the section.

7. St. 1967, c. 787 rewrote the section and made the following changes:

(1) It added, at the beginning of the section, the proviso of "(e)xcept as hereinafter provided."

(2) It added a proviso at the end of the old section, and changed what had been a period into a semi-colon. The proviso stated that a criminal complaint alleging, either, a violation of any provision of chapters 89 or 90 which is not punishable by imprisonment or by a fine of more than $100, or a

violation of any city ordinance or town by-law regulating the operation of motor vehicles, may issue against a child between the ages of sixteen and seventeen years of age without first proceeding against him as a delinquent child.

In effect this enactment carved out a limited exception to the rule of section 74 in cases of minor infractions of motor vehicle law.

Ch. 119, s. 75: Binding over for trial (repealed)

1. R.L. (1902) c. 86, s. 14, 17, 30 are the Revised Laws which were eventually recodified as G.L. 119, s. 75 in the 1921 revision and recodification of the General Laws. These three sections provided as follows:

R.L. 86, s. 14 provided that on complaint against any boy or girl between seven and seventeen for any offense not punishable by death or life imprisonment, the court or magistrate will examine on oath the complainant and the witnesses produced by him, shall reduce the complaint to writing and cause it to be subscribed to by the complainant, and may issue a warrant reciting the substance of the accusation and requiring the officer to whom it is directed to take the accused person and bring him or her before the court or magistrate to be dealt with according to law, and to summon such witnesses as shall be named therein to appear and give evidence on the examination.

R.L. 86, s. 17, provided that if a boy or girl is brought on a complaint under the provisions of R.L. 86, s. 14 (warrants to apprehend boys or girls) or s. 15 (summons instead of a warrant) before a court or magistrate, a summons shall be issued to the father, if living and resident in the place where the child was found, and if not then to the mother if she is living and so resident, and if there is no parent then to the lawful guardian, if there is one so resident, and if not then to the person with whom, according to the statement of the boy or girl, and such testimony as shall be received, the child resides. If there is no such person then the court may appoint a suitable person to act on behalf of the child, requiring him or her to appear at a time and place stated in the summons to show cause why such boy or girl should not be committed to the Lyman School or the Industrial School respectively. If the court or magistrate is of the opinion that such boy or girl should, if found guilty, be sent to a public institution or committed to the State Board of Charity, the court or magistrate shall cause written notice of the complaint to be given by mail or otherwise to the State Board, which shall have an opportunity to investigate the case, attend the trial and protect the interests of, or otherwise provide for the child.

R.L. 86, s. 30 provided that a summons to appear before a court or magistrate as provided in R.L. 86, s. 17, unless service thereof is waived in writing, shall be served by a constable or police officer by delivering it personally to the person to

whom it is addressed, or by leaving it with a person of sufficient age at the place of residence or business of such person. The constable or police officer must immediately make return to the same court or magistrate of the time and manner of service.

2. G.L. 119, s. 75 (1921 Revision). The 1921 revision integrated the provisions of sections 14, 17 and 30 of chapter 86 of the Revised Laws of 1902 into one new section. In the context of the "new" juvenile code, as amended by St. 1906, c. 413 and other enactments, this new section functioned very differently from the old sections of 14, 17 and 30. Those sections had basically provided for the institution of and proceedings on complaints against juveniles. Section 75 of chapter 119 of the General Laws of 1921 provided, by contrast, for the institution of and proceedings on one particular type of complaint, namely a criminal complaint before a district court or trial justice. Under the "new" juvenile code this type of complaint was distinct from a complaint of delinquency or waywardness, and in any case, it could not be instituted until after a delinquency complaint had been brought and dismissed as required by the transfer provisions of the General Laws of 1921.

G.L. (1902) 119, s. 75 provided as follows: upon complaint against any child between seven and fourteen years against whom proceedings have been begun and dismissed as required by G.L. 119, s. 61, or against any child between fourteen and seventeen years of age, and in either case for an offense not punishable by death or life imprisonment, the court or trial justice shall examine on oath, the complainant and the witnesses produced by him, shall reduce the complaint to writing and cause it to be subscribed to by the complainant, and may issue a warrant reciting the substance of the accusation and requiring the officer to whom it is directed to take the person accused and bring him before the court or trial justice, to be dealt with according to law, and to summon such witnesses as shall be named in the warrant to appear and give evidence on the examination. The provisions of section 55 shall apply to proceedings under this section except that the summons shall require the person summoned to show cause why the child should not be committed to the Lyman School or an Industrial school.

Notice that the Commissioners incorporated a lot of the actual language of R.L. 86, s. 14, on the examination and issuance of the complaint. The material of R.L. 86, s. 17 and 30 was incorporated by reference to G.L. 119, s. 55, which in turn incorporated a lot of the actual language of those two sections.

At this juncture it is appropriate to explain the structure of the delinquency and criminal proceedings as they existed in 1921. At that time there were three levels of proceeding to which a juvenile could be subject to: (1) delinquency and waywardness proceedings before a district court or the Boston Juvenile Court; (2) criminal proceedings before a district court or trial justice; and (3) criminal proceedings before a superior court. The provisions of Chapter 119 on "criminal proceedings" (sections 73 to 83) refer to criminal proceedings before a district court or a trial justice. Criminal proceedings before the superior court were entirely outside of the delinquency code, and were activated by the commission of an offense by any child between the ages of seven and seventeen which was punishable by death or life imprisonment. Notice that Chapter 119 never states anywhere in the body of the code what happens to children between the ages of seven and seventeen who fall outside of the definition of the delinquency code because they are charged with an offense punishable by death or life imprisonment. That they go to superior court can only be inferred from the provisions of G.L. 119, s. 80, which provides for the binding over to superior court of children between fourteen and seventeen who have been found guilty of a crime by a district court or a trial justice, and who are not considered a fit subject for one of the training schools.

Notice the dispositional alternatives open to the courts at these three levels of process. (1) A child adjudged wayward may be placed in the care of a probation officer or dealt with as a neglected child. A child adjudged delinquent may have his case placed on file, may be put in the care of a probation officer, or may be placed with "any person" under authorization granted by the court to the Department of Public Welfare. If the child, so placed, thereafter proves unmanageable, he may be committed to one of the training schools. Notice that delinquency courts have no power to commit a child directly to one of the training schools. (2) A child found guilty of a crime by a district court or trial justice may only be committed to one of the training schools. He may not be committed to an adult facility, although he may be bound over for proceedings in the superior court. (3) A child tried before a superior court may presumably be sentenced the same as an adult who has been convicted of a crime before the superior court.

Notice that G.L. 119, s. 61, 74, and 75, as represented in the 1921 revision, are somewhat confusing when read together. In the first place, section 74 speaks only of children between seven and fourteen. Children between fourteen and seventeen are implicitly not subject to the section. Section 75 appears to support section 74 by providing that only children between seven and fourteen must have their complaints dismissed as required by section 61 whereas children between fourteen and seventeen may be brought directly before a district court or trial justice in criminal session. This is true so long as one reads the phrase "for any offense not punishable by death or life imprisonment" as modifying both children between seven and fourteen and children between fourteen and seventeen. As written, the phrase appears on first reading to modify only the category of children between fourteen and seventeen. Section 61 itself unfortunately makes no distinction between children under fourteen and those fourteen and older in terms of specifying to whom its transfer provisions shall apply. Probably section 61 intended to make such a distinction. The most likely explanation for why it did not lies in the fact that both section 61 and section 74 were enacted by St. 1906, c. 413, s. 11. The enactment's two sentences were split up in the 1921 revision and recodification of the General Laws. However, when read together as originally enacted in St. 1906, c. 413, s. 11, it seems apparent that the enactment was intending to make the distinction all along.

3. St. 1933, c. 196, s. 2, changed the first half of the first sentence of the section to read as follows: "(u)pon complaint against any child between seven and seventeen years of age against whom proceedings have been begun and dismissed as required by section sixty-one for any offense not punishable by death or imprisonment for life..." Notice how this enactment changed the transfer provisions of the code. Prior to this enactment children between seven and fourteen who were charged with an offense not punishable by death or life imprisonment could have criminal charges instituted before a trial justice or district court if they had had a delinquency complaint brought and dismissed against them as required by section 61. Children between fourteen and seventeen could have criminal charges instituted before a trial justice or district court without having a delinquency complaint brought and dismissed against them as required by section 61. Now, after this enactment, all children between seven and seventeen who are charged with an offense not punishable by death or life imprisonment, must have a delinquency complaint brought against them and dismissed in accordance with the provisions of section 61 before criminal proceedings may be instituted before a trial justice or district court.

4. St. 1948, c. 310, s. 13, made the following changes in the section:

(1) It changed the age for those children that are subject to the provisions of this section from "between seven and seventeen" to "between fourteen and seventeen.

In effect a criminal complaint in a district court or before a trial justice can henceforth be brought only against a child of fourteen or older against whom delinquency proceedings have been dismissed.

(2) It deleted the reference to offenses punishable by life imprisonment, in effect putting offenses punishable by life imprisonment back within the jurisdiction of the delinquency code (see also the St. 1948, c. 310, s. 3 amendment to the definition of "delinquent child"). As a result, only children who are charged with an offense punishable by death have complaints brought against them automatically in the superior court. All other children between the ages of seven and fourteen can only be tried as delinquents, and all other children between fourteen and seventeen can have criminal proceedings brought against them before district courts or trial justices only after the transfer provisions of section 61 have been complied with. If these fourteen to seventeen year olds are considered an unsuitable subject for commitment to the Youth Service Board (see discussion of the 1948 amendment to G.L. 119, s. 80) then they may still be bound over for trial in the superior court.

(3) In the last lines of the paragraph it substituted "committed to the custody of the youth service board" for "committed to the Lyman school or one of the industrial schools." This change reflected the fact that, with the establishment of the Youth Service Board, both courts in their juvenile sessions and now district or trial justices in their criminal sessions could only commit a child to the custody of the Youth Service Board, and not directly to any of the training schools.

5. St. 1960, c. 353, s. 4, struck out of the fifth line the words "not punishable by death." As a result no child between seven and seventeen could automatically go before the superior court in the regular course of criminal proceedings. Children between seven and fourteen may no longer be tried as criminals before a district court or trial justice or before a superior court under any circumstances. Children between fourteen and seventeen may be tried as criminals before a district court or trial justice, but only after a delinquency complaint has been brought and dismissed against them, as required by section 61 of the code. Only if found guilty by a district court or trial justice, and if found an unfit subject for commitment to the Youth Service Board, may a child between fourteen and seventeen be bound over for proceedings before the superior court. Notice that St. 1960, c. 353, s. 1 also rewrote the definition of "delinquent child" so that a child who commits an offense punishable by death was no longer automatically excluded from the jurisdiction of the delinquency code.

6. St. 1964, c. 308, s. 7, completely rewrote the section. As rewritten, the section provides as follows: if, under G.L. 119, s. 61 or s. 72A, the court orders that a delinquency complaint be dismissed, the court shall cause a criminal complaint to be issued against such person, cause the complaint to be subscribed to by the complainant, and examine on oath the complainant and the witnesses produced by him. If the person accused appears to be guilty of the offense or violation, the court shall commit him or bind him over for trial in the superior court according to the usual course of criminal proceedings. G.L. 218, s. 30 shall apply to any such case, and G.L. 119, s. 69 shall apply to any person committed under this section for failure to recognize, pending a determination by the court that he appears to be guilty, or pending final disposition in the superior court.

Notice the following things about this enactment:

(1) It eliminated the essentially intermediate level of criminal proceedings against juveniles, which had formerly provided for trial by district courts or trial justices. Recall that those courts had as a sentencing option only commitment to the Youth Service Board and its sucessors, or bindover for proceedings in the superior court.

(2) It eliminated language in the text distinguishing between children between seven and fourteen and children between fourteen and seventeen. In practice the distinction remained intact, however, since section 61 of the code maintained that distinction, and the institution of criminal proceedings under the revised section 75 was predicated on fulfilling the transfer requirements of section 61.

(3) The second sentence of the section relative to recognizance, etc., is entirely new.

(4) It carried over from the prior text of the section the language relative to the mechanics of the issuance of a criminal complaint.

7. St. 1975, c. 840, s. 2A, repealed this section in its entirety. It should be noted that the material of this section formed the basis of the new fourth paragraph of section 61, as enacted St. 1975, c. 840, s. 1.

Ch. 119, s. 76: Child may be put in charge of D.P.W.

1. R.L. (1902) c. 86, s. 21, was the forerunner of this section. It provided in essence that the court or magistrate before whom a child is brought on complaint, upon the request of the State Board of Charity, may authorize the State Board to take and indenture the child, or to place the child in charge of any person, and if he or she proves unmanageable then to commit them to one of the training schools until they turned twenty-one. The State Board could also provide for the maintenance, in whole or in part, of any child so indentured or placed in the charge of any person. The State Board could also discharge from its custody a child who had been admitted to its care under this section.

2. G.L. 119, s. 76 (1921 Revision). The revision incorporated the changeover of the State Board of Charity to the Department of Public Welfare (see St. 1919, c. 350, s. 87), and made the following other substantive changes:

(1) It substituted "court or trial justice" for "court or magistrate" in the first line of the section.

(2) It eliminated the provision allowing the State Board to indenture children Notice that there was apparently no enactment of the General Court which eliminated the provisions on indenture. These provisions were most likely eliminated through the general repeal provisions of St. 1906, c. 413.

(3) It added the provisions relative to the Industrial School for Boys, newly established, and provided that commitments to that school would be of boys between the ages of fifteen and eighteen. Notice that once committed to one of the training schools, the child could still be held until he or she turned twenty-one.

3. St. 1948, c. 310, s. 14, made the following changes in the section:

(1) It substituted references to the Youth Service Board for all references to the Department of Public Welfare.

(2) It provided that, instead of allowing transfer of an unmanageable child to the Lyman School or one of the Industrial schools respectively, transfer would now be to "that facility which in the opinion of said board, after study, will best serve the needs of the child, until the child becomes twenty-one years of age."

4. St. 1964, c. 308, s. 5 repealed this section in its entirety.

Ch. 119, s. 77: Warrant of commitment

1. R.L. (1902) c. 86, s. 22, was the forerunner section for this section. It provided as follows:

At the time named in the summons the court or magistrate shall examine the boy or girl and any person who appears in answer to the summons, and take such testimony relative to the case as may be produced. If the allegations are proved, and it appears that the boy or girl is a suitable subject for the Lyman or Industrial School, and that his or her moral welfare and the good of society require that he or she should be sent thereto for instruction, employment, or reformation, then a warrant of commitment shall be issued. (The text of the warrant was then spelled out with exact particularity).

No variance from said form shall be considered material if it sufficiently appears on the face thereof that the boy or girl is committed by the court or magistrate in the exercise of the powers conferred by this chapter. The warrant may be executed by any officer qualified to serve civil or criminal process in the county in which the case is heard. Accompanying the warrant the court or magistrate shall transmit to the superintendent, by the officer serving it, a statement of the substance of the complaint and the testimony given in the case, and such other particulars relative to the boy or girl committed as can be ascertained.

2. G.L. 119, s. 77 (1921 Revision). The 1921 revision made the following changes in the former R.L. 86, s. 22:

(1) It substituted references to "court or trial justice" for "court or magistrate" wherever that term appeared.

(2) It substituted "industrial schools" for "industrial school" in the sixth line of the section, in view of the establishment of the Industrial School for Boys (see St. 1908, c. 639, s. 3).

(3) It substituted a much more expansive text for the actual warrant of commitment than what had existed before.

(4) It substituted "instruction, employment or training" for "instruction, employment or reformation" in the eighth line of the section.

(5) It added a final sentence to the section which provided that in the case of commitments in proceedings under sections 52 to 63, the word "delinquent" is to be substituted for the word "guilty" in the text of the warrant of commitment.

3. St. 1948, c. 310, s. 15, made the following changes in the section:

(1) It changed the text of the warrant of commitment to reflect the fact that commitments would henceforth not be made to individual training schools, but to the custody of the Youth Service Board.

(2) It substituted "diagnosis, treatment or training" for "instruction, employment, or training" in the seventh line of the section.

(3) It changed language in the actual text of the warrant of commitment to reflect the fact that commitments would henceforth be made to the custody of the Youth Service Board.

(4) It changed the language in the actual text of the warrant of commitment to reflect the fact that the Youth Service Board could now hang onto a child committed until the expiration of his or her minority or until he or she turned twenty-three.

4. St. 1968, c. 308, s. 5, repealed the section in its entirety. The material formerly contained in this section was added to Chapter 119 as s. 84 by St. 1968, c. 308, s. 9.

Ch. 119, s. 78: Certificate of age and residence

1. R.L. (1902) c. 86, s. 23, was the forerunner for this section. It provided that the court or magistrate shall certify in the warrant of commitment the age of the boy or

girl as near as can be ascertained, and the place in which he or she resided at the time or arrest, and that such certificate shall be conclusive evidence of his or her residence for the purposes of this chapter.

2. St. 119, s. 78 (1921 Revision). The 1921 revision substituted "court or trial justice" for "court or magistrate" and provided that the age of a child should be determined in years and months instead of just in years.

3. St. 1964, c. 308, s. 5, repealed the section in its entirety.

Ch. 119, s. 79: Second commitment

1. R.L. (1902) c. 86, s. 25 was the forerunner for this section. It provided that if a boy or girl previously committed to the Lyman or Industrial School is again brought before a court or magistrate on a complaint, the case may be examined and a warrant for recommitment issued without issuing the summons required by the provisions of R.L. 86, s. 17.

2. G.L. 119, s. 79 (1921 Revision). The 1921 revision made the following changes in the language of the section:

(1) It substituted "child" for each instance of "boy or girl."

(2) It added a reference to the Industrial School for Boys, established in 1908.

(3) It substituted "court or trial justice" for "court or magistrate."

(4) It substituted a reference to G.L. 119, s. 55 for the reference to R.L. 86, s. 17.

3. St. 1948, c. 310, s. 16, inserted, in reference to previous commitments, the line "or to the custody of the youth service board." The effect of this was that commitment to the custody of the Youth Service Board now also counted as a previous commitment for the purposes of this section, just as commitment to the Lyman School or one of the Industrial schools already so counted.

4. St. 1953, c. 319, s. 15, struck out the reference to "trial justice" in the third line of the section.

5. St. 1964, c. 308, s. 5, repealed this section in its entirety.

Ch. 119, s. 80: Sentence of child unfit for a training school

1. R.L. (1902) c. 86, s. 26 was the forerunner for this section. It provided that if a boy or girl is found guilty before a police, district, or municipal court, or trial justice, and is not considered a fit subject for the Lyman or Industrial School, he or she shall be sentenced, or bound over to the superior court according to the usual course of criminal proceedings.

Notice that the phrase "he or she shall be sentenced" presumably means that the child could be sentenced in whatever manner was allowed for adults in the police, district, or municipal courts, or by trial justices.

2. G.L. 119, s. 80 (1921 Revision). The 1921 revision made the following changes in the section:

(1) It substituted "child" for "boy or girl," and "he" for "he or she," in every instance.

(2) It substituted "court or trial justice" for "court or magistrate."

(3) It added a reference to the Industrial School for Boys.

3. St. 1948, c. 310, s. 17, amended the section by striking out the reference to the Lyman and Industrial Schools, and inserting in its place a reference to the Youth Service Board. In effect, the section now provided that if a committed child was found to be an unfit subject for commitment to the Youth Service Board, then he or she could be sentenced or bound over to the superior court.

4. St. 1964, c. 308, s. 5, repealed this section in its entirety.

Ch. 119, s. 81: Appeal from order of commitment

1. R.L. (1902) c. 86, s. 28, was the forerunner for this section. It provided that a boy or girl ordered committed to the Lyman or Industrial School, or sentenced by a police, district, or municipal court, or trial justice, may appeal to the superior court. The appeal shall be entered, tried and determined in the same manner and subject to the same provisions as appeals from trial justices in criminal cases.

2. G.L. 119, s. 81 (1921 Revision), tightened up some of the language of the section and made the following changes:

(1) It substituted "child" for "boy or girl."

(2) It added a reference to the Industrial School for Boys.

(3) It added a line that commitments to one of the training schools had to be "by authority of section seventy-three."

(4) It substituted "or sentenced under the preceeding section" for "or sentenced as aforesaid."

3. St. 1948, c. 310, s. 18, made the following changes:

(1) It substituted "to the custody of the youth service board" for "to the Lyman school or industrial school for boys or the industrial school for girls."

(2) It deleted the phrase "or sentenced under the preceeding section."

In effect this section now provided that a child ordered committed to the Youth Service Board by authority of section 73 could appeal to the superior court in the same manner as appeals from trial justices in criminal cases.

4. St. 1964, c. 308, s. 5, deleted the section in its entirety.

Ch. 119, s. 82: Return of warrants for commitment of girls

1. R.L. (1902) c. 86, s. 29, was the forerunner for this section. It provided that warrants issued by judges of probate, trial justices, or commissioners for the commitment of girls may be returned to the clerks of the superior court, and that all fees thereon shall be allowed in the same manner as expenses in criminal proceedings.

2. G.L. 119, s. 82 (1921 Revision), tightened up some of the language of this section and deleted the reference to judges of probate and to commissioners. As a result this section, as amended, applied only to warrants of commitment to the Industrial School issued by trial justices. Judges of probate and commissioners had, in the meantime, lost authority to hear juvenile cases against girls.

3. St. 1948, c. 310, s. 19, substituted "custody of the youth service board" for "industrial school for girls" in the second line of the section.

4. St. 1964, c. 308, s. 5, repealed the section in its entirety.

Ch. 119, s. 83: Proceedings in superior court

1. R.L. (1902) c. 86, s. 32 was the forerunner for this section. It provided that if a boy between the ages of seven and fifteen is convicted in the superior court of an offense which is not punishable by imprisonment for life, he may be sentenced to the Lyman School or to such other punishment as is provided by law. Upon a commitment under the provisions of this section, the statement and certificate required by R.L. 86, s. 22 and s. 23 shall be made and transmitted as provided in those sections.

2. G.L. 119, s. 83 (1921 Revision), tightened up some of the language and made the following changes:

(1) It changed the jurisdiction of the section by substituting "between seven and eighteen" for "between the ages of seven and fifteen."

(2) It added a passage to the fourth line which provided that boys between fifteen and eighteen could be committed to the Industrial School for Boys.

(3) It substituted references to G.L. 119, s. 77 and s. 78 for references to R.L. 86, s. 22 and s. 23, in the second sentence of the section.

3. St. 1931, c. 208, substituted "committed to the Lyman school" for "sentenced to the Lyman school" in the third line of the section. The amendment made no other changes.

4. St. 1948, c. 310, s. 20, amended the section by making the following three changes:

(1) It substituted "between fourteen and eighteen" for "between seven and eighteen," thereby releasing boys between seven and fourteen from the provisions of this section.

(2) It deleted the phrase "other than imprisonment for life" thereby making the provisions of this section applicable to any boy between fourteen and eighteen who commits an offense punishable by imprisonment, even imprisonment for life. Notice that an offense punishable by death is still outside of the jurisdiction of this section, although there is no explicit statement on the subject in the section.

(3) It substituted "to the custody of the Youth Service Board until he becomes twenty-three years of age" for "to the Lyman school if under fifteen years of age, to the industrial school for boys if between fifteen and eighteen years of age..."

5. St. 1964, c. 308, s. 8, completely rewrote this section. As rewritten the section provides that the indictment of any person bound over under G.L. 119, s. 75 shall be tried before the superior court in the same manner as any criminal proceeding, and upon conviction such person may be sentenced to such punishment as is provided by law for the offense, or placed on probation, with or without a suspended sentence for such period of time and under such conditions as the court may order. However, if the person has not attained his eighteenth birthday prior to a finding or plea of guilty, the superior court may, in its discretion, and in lieu of a judgment of conviction and sentence, adjudicate the person a delinquent child and make such disposition as may be made by a district court or the Boston Juvenile Court under G.L. 119, s. 58. Provided that no person adjudicated a delinquent child under the provisions of this section shall, after he has attained his eighteenth birthday,

be committed to the Youth Service Board or continued on probation or under the jurisdiction of the court.

Substantively this amendment made the following changes:

(1) It made the section applicable to both boys and girls, instead of to boys only.

(2) It changed the jurisdiction from between the ages of fourteen and eighteen to between the ages of fourteen and seventeen (except where a child is not apprehended until after his or her eighteenth birthday).

(3) It added the provisions on probation subsequent to a conviction.

(4) It provided that the superior court could not commit a child to the custody of the Youth Service Board (or make such other disposition as provided by G.L. 119, s. 58) unless it had adjudicated a child delinquent in lieu of a conviction. Previously the superior court could commit a child to the custody of the Youth Service Board (until the child turned twenty-three) upon a criminal conviction.

(5) It added the provision that no child adjudicated delinquent and having passed his or her eighteenth birthday could be committed to the custody of the Youth Service Board, continued on probation, or remain subject to the jurisdiction of the superior court.

6. St. 1969, c. 838, s. 24, substituted "department of youth services" for "youth service board."

7. St. 1978, c. 478, s. 66, substituted "a juvenile court" for "the Boston juvenile court."

Ch. 119, s. 84: Warrant of commitment (department of youth services)

1. St. 1964, c. 308, s. 9, was the enacting statute for this section. The language of this section derives completely from the old G.L. 119, s. 77, which was deleted by St. 1964, c. 308, s. 5. The differences between the new section 84 and the old section 77 are primarily the following:

(1) That the introductory paragraph was entirely rewritten. As rewritten, the introductory paragraph eliminates all the language relative to the examination of the child and his suitability for commitment to one of the training schools, and inserts instead one simple sentence which provides that whenever a person is committed to the Youth Service Board by a court under G.L. 119, s. 56, 58, and 83, a warrant of commitment shall issue.

(2) The language of the text of the warrant of commitment relative to the Youth Service Board's maintaining custody of a committed youth until his or her twenty-third birthday has been eliminated. A youth may still be kept for the duration of his or her minority, however. Otherwise, the text of the warrant of commitment remains unchanged.

(3) The final paragraph of the section is identical under the old section 77 and the new section 84.

2. St. 1969, c. 838, s. 25, amended all references in the section, including those of the text of the warrant, to substitute "department of youth services" for "youth service board."

Chapter 120 Department of Youth Services and Mass. Training Schools
Section Analysis: Chapter 120 of Mass. General Laws

Title of Chapter 120:

1. Prior to 1948, Ch. 120 was entitled; "MASSACHUSETTS TRAINING SCHOOLS."

2. St. 1948, Ch. 310, s. 22, amended the title to read: "YOUTH SERVICE BOARD AND MASSACHUSETTS TRAINING SCHOOLS."

3. St. 1969, Ch. 838, s. 26, amended the title to its present form: "DEPARTMENT OF YOUTH SERVICES AND MASSACHUSETTS TRAINING SCHOOLS."

Chapter 120, s. 1: Corporate status of department of youth services; holding and investing trust funds

1. The 1921 codification of Ch. 120, s. 1, provided that the trustees of the Massachusetts training schools shall be a corporation for the purpose of taking, holding and investing any grant or devise of land or any gift or bequest made for the use of any institution of which they are trustees, except as provided in section 15, Chapter 10.

   In addition, the trustees were vested with those powers and duties formerly held by the board of trustees and treasurers of the state reform schools, the state industrial schools or the state primary schools, except as provided in section fifteen of chapter ten.

2. St. 1948, Ch. 310, s. 22(1), substituted "the youth service board", for "the trustees of the Mass. training schools", to reflect the creation of the board.

   The Board was vested with the powers and duties to manage, govern and care for those institutions over which the trustees previously exercised authority.

3. St. 1952, Ch. 605, s. 4, substituted "the division of youth service", for "the youth service board".

4. St. 1969, Ch. 838, s. 27, substituted "the department of youth services", for "the division of youth service".

Chapter 120, s. 2: Management, government and care of industrial schools; employment of expert personnel by director

1. The 1921 codification of Ch. 120, s. 2, provided that the trustees have responsibility for the management, governance and care of the Lyman School for Boys at Westborough, the Industrial School for Girls at Lancaster, the Industrial School for Boys at Shirley, and all other institutions supported by the Commonwealth, except the Massachusetts Reformatory, responsible for the custody, care and training of delinquent or wayward children or juvenile offenders.

2. St. 1948, Ch. 310, s. 22, replaced "the trustees" with "the youth service board", and added "habitual truants or habitual absentees or habitual school offenders" to the list of designations of juveniles in institutions over which the board exercised authority.

   The purpose of placing juveniles in those institutions was expanded to encompass diagnosis, in addition to custody, care and training.

   In addition, the board was given explicit control over the land and buildings of the schools.

3. St. 1952, Ch. 605, s. 5, substituted "the division of youth service" for "the youth service board".

In addition, the Director of the Division of Youth Service was granted the authority to employ "medical, psychiatric and other expert personnel, superintendents, field representatives, supervisory, institutional, clerical and other employees as are necessary to carry out the duties of the division."

Physicians, psychiatrists and psychologists were exempted from chapter thirty one.

4. St. 1955, Ch. 770, s. 4, further amended section two by striking out "the Mass. reformatory," and inserting "correctional institutions of the Commonwealth," in its place.

This amendment further limited the Division's authority to control institutions in which juveniles could be placed/committed.

5. St. 1969, Ch. 838, s. 28, further amended section two by replacing, "the division of youth services" with, "the department of youth services."

In addition, the Commissioner of the Department was vested with the powers previously held by the Director of the Division, with minor changes. The Commissioner is now required to authorize the employment of "medical, dental, psychiatric, psychological, social work, legal, investigative and other expert personnel, including experts in the fields of fiscal affairs, research and planning, and personnel administration and training, superintendents, field representatives, supervisory, clerical and other employees as he shall deem necessary."

Finally, physicians, dentists and psychiatrists were exempted from the employment provisions of chapter thirty one or section nine A of chapter thirty.

Ch. 120, s. 3: Appointment of superintendents, chaplains and physicians

1. The 1921 codification of Ch. 120, s. 3, provided that the trustees shall annually elect a superintendent and a physician of each training school, and designate their compensation.

The superintendent was then required to appoint other officers and fix their compensation, with the approval of the trustees.

2. St. 1948, Ch. 310, s. 22, substituted "the board" in place of "the trustees," and required the Board to appoint "all other officers and employees" at the schools, and to prescribe their duties, from time to time.

3. St. 1952, Ch. 605, s. 6, further amended section three by striking out "the board" and inserting "the director of the division of youth services," in its place.

In addition, the Director was authorized to appoint chaplains as well as superintendents and physicians.

4. St. 1969, Ch. 838, s. 30, substituted "commissioner of youth services" for "director of the division of youth services."

Ch. 120, s. 4: Rules and regulations; by-laws

1. The 1921 codification of Ch. 120, s. 4, provided that the trustees have control over the land and buildings of each training school. They were authorized to establish rules, regulations and by-laws for governing the schools, the direction of its officers, and the instructions and discipline of its inmates.

The trustees were required to provide employment, education and training for the inmates and parole, discharge or remand as provided by Chapter 120.

They were directed to exercise "a vigilant supervision over the institutions, their officers and inmates, and prescribe the duties of the officers."

Provision for the amendment of a rule, regulation or by-law was also included.

2. St. 1948, Ch. 310, s. 22, amended section four to authorize the Youth Service Board to establish rules, regulations and by-laws for the governance of each institution, subject to the approval of the Governor and Council.

The section's scope was qualified by additional language which required that the purpose of all education, employment, training, discipline, recreation and other activities be, "to build up the self-respect and self-reliance of the children residing at the institutions, to qualify them for good citizenship and honorable employment."

3. St. 1952, Ch. 605, s. 7, substituted "the director of the division of youth service" for "the youth service board."

4. St. 1969, Ch. 838, s. 31, subsituted "the commissioner of youth services" for "the director of the division of youth service."

Ch. 120, s. 5: Examination and study of children committed; re-examinations; records; discharge

1. The 1921 codification of Ch. 120, s. 6, provided in part that at least one trustee must visit each school once every two weeks. At that time, the girls and boys were to be examined in the school rooms, workshops and registers. In addition, the trustees were authorized to inspect various departments.

Written records were to be kept of these visits. Once every three months, a majority of the trustees were required to thoroughly examine all the departments of each school.

2. St. 1948, Ch. 310, s. 22, clarified s. 6 and remodeled it to its present form. It provided that when a person has been committed to the Board, the Board shall study him and investigate all pertinent circumstances of his life and behavior.

The Board was authorized to re-examine all individuals within its charge periodically, or as frequently as desirable, within a one year interval.

The Board was required to keep written records of all examinations, conclusions and orders concerning the disposition or treatment of each person subject to its control.

Finally, failure to examine a person committed to the Board or re-examine him within one year's time, entitled him to petition the committing court for an order of discharge. This order had to be granted unless the board satisfied the court of the necessity for further control.

3. St. 1969, Ch. 838, s. 33, amended s. 5 by substituting "the department of youth services" for "the board."

Ch. 120, s. 6: Liberty under supervision; confinement; reconfinement; revocation or modification of order; discharge

1. The 1921 codification of Ch. 120, vested the trustees with several alternatives concerning the revocation or modification of a court-ordered commitment of a child to an institution. These alternatives may be found under sections 11, 13 and 20.

Section 11 provided that if within thirty days after the commitment of a child to the Lyman School or any of the industrial schools, the trustees have

reason to believe that the child was older than the maximum age of commitment for that institution, they may apply to the court for a revision of that order. Where the court substantiated the trustees' belief, it may issue a new appropriate order.

Section 13 provided a child committed to the Lyman School or any of the industrial schools shall be disciplined, instructed, employed and governed until the age of twenty-one, unless paroled, legally transferred or discharged. An honorable discharge could be granted by the trustees to any child whose conduct the trustees considered meritorious, worthy or deserving of discharge, and whom they believed permanently reformed. The trustees were required to notify the court in writing of their decision.

Section 20 provided that the trustees could discharge any boy who they considered "physically or mentally unfit to remain in the Lyman School or Industrial School for Boys," or "any girl who, in their judgment, ought for any cause to be removed from the Industrial School for Girls." A written record of the discharge was to be kept, and a copy sent to the committing court containing the name of the child, the person to whom the child was returned, the date of discharge and a statement of the reasons for discharge.

2. St. 1948, Ch. 310, s. 22(6), revised the 1921 codification to its present form.

The board was authorized to order the following dispositions for a person committed to it, after an objective consideration of all available information:

a) Permit him his liberty under supervision and upon such conditions as it believes conducive to law-abiding conduct.

b) Order his confinement under such conditions as it believes best designed for the protection of the public.

c) Order reconfinement or renewed release as often as conditions indicate to be desirable.

d) Revoke or modify any order, except an order of final discharge, as often as conditions indicate it to be desirable.

e) Discharge him from control when it is satisfied that such discharge is consistent with the protection of the public.

This amendment consolidated several older sections pertaining to the board's authority to confine or discharge a child, and enacted more generalized language which applies to training schools as well as private providers.

3. St. 1949, Ch. 593, s. 1, amended s. 6(e) to include, "with notice to the court, except as provided in section twelve." Section twelve prohibited returning a child to his home immediately after commitment and the initial diagnosis without the approval of the committing court.

4. St. 1969, Ch. 838, s. 34, substituted "department of youth services" for "board" in the introductory clause.

Ch. 120, s. 6A: Correction of socially harmful tendencies

1. The 1921 codification of Ch. 120, s. 5, provided for the instruction of boys and girls. The trustees were required to instruct boys and girls under their charge in "piety and morality, and in branches of knowledge adapted to their age and capacity."

Boys were to receive instruction in either a mechanical, manufacturing, agricultural or horticultural trade. Girls could receive the same, but domestic and household labor was emphasized.

Any combination of these could be designed to adapt to the "age, strength, disposition and capacity" of the child, including any other "arts, trades and employments," which the trustees determined would secure the child's reformation and future benefit.

2. St. 1948, Ch. 310, s. 22(6A), was added as a revised version of St. 1932, s. 5. Section six A provided that: "As a means of correcting the socially harmful tendencies of a person committed to it, the board may—

a) Require participation by him in vocational, physical, educational, and correctional training and activities.

b) Require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public.

c) Provide such medical or psychiatric treatment as is necessary."

Again, the language enacted by section 6A clarifies the earlier obligations of the trustees, and makes it easier for an agency with discretion to establish guidelines by which an institution or a private program may be directed.

3. St. 1969, Ch. 838, s. 35, substituted "department of youth services" for "board" in the introductory clause.

Ch. 120, s. 7: Powers and duties of superintendent

1. The 1921 codification of Ch. 120, s. 7, provided that the superintendent of each school with the subordinate officers shall have general charge and custody of the inmates. He shall be a constant resident at the school, and, under the direction of the trustees, shall discipline, govern, and instruct the inmates, using his best endeavors to reform them while preserving their health, promoting their physical development, and securing the formation of moral, religious and industrious habits, and regular and thorough progress in their studies, trades and employment.

2. St. 1948, Ch. 310, s. 22(7), modified section seven, adding that the superintendent of each school, with the subordinate officers, who had responsibility for the welfare and custody of the children lodged therein, now must carry out the rehabilitative program prescribed by the board.

In addition, the language in the second sentence describing the superintendent's duties as to reformation was amended to read, "He shall seek to establish relationships and to organize a way of life that will meet the moral, physical, emotional, intellectual and social needs of the children under his care as those needs would be met in an adequate home."

3. St. 1952, Ch. 605, s. 9, substituted "director of the division of youth service" for "board."

4. St. 1969, Ch. 838, s. 36, substituted "commissioner of youth services" for "director of the division of youth service."

Ch. 120, s. 8: Bond and accounts of superintendents; accounting to commissioner of youth services

1. The 1921 codification of Ch. 120, s. 8, provided the substance of the section that exists today.

Section 8 provides that superintendents must be bonded to the Commonwealth in an amount prescribed by the State Auditor. In addition, the superintendent must keep careful accounts of the receipts and expenditures of all the property entrusted to him.

2. St. 1948, Ch. 310, s. 22, substituted "comptroller" for "state auditor" and "board" for "trustees".

3. St. 1952, Ch. 605, s. 10, substituted "director of the division of youth service" for "board".

4. St. 1969, Ch. 838, s. 37, substituted "commissioner of youth services" for "director of the division of youth service."

Ch. 120, s. 9: Rogers fund

1. The 1921 codification of Ch. 120, s. 9, authorized the superintendent of the Industrial School for Girls to purchase books with the income and profits of the donation of Henry B. Rogers. This was to be carried out under the direction of the trustees and according to the terms of the donation.

2. St. 1948, Ch. 310, s. 22(9), substituted "board" for "trustees".

3. St. 1952, Ch. 605, s. 11, substituted "director of the division of youth services" for "board".

4. St. 1969, Ch. 838, s. 38, substituted "commissioner of youth services" for "director of the division of youth services."

Ch. 120, s. 10: Use of public or private facilities, institutions and agencies; control; inspection; acceptance and control of delinquent children; effect of placement of person in or release from institution or control by department

1. St. 1948, Ch. 310, s. 22(10), authorized the Board, within specific limitations, to make use of all correctional facilities in carrying out its duties.

Paragraph (a) authorizes the Board to make use of "law enforcement, detention, supervisory, penal, medical, educational, correctional, segregative and other facilities, institutions and agencies. These facilities, institutions and agencies, whether public or private, should be within the Commonwealth, provided that the Board shall not transfer the custody of any person who was committed to it and who is under twenty-one, to a penal institution. The Board was also granted the authority to enter into agreements with the appropriate private or public officials for separate care and special treatment in existing institutions of persons subject to the control of the Board.

Paragraph (b) limits the Board's control over existing facilities, institutions or agencies which are not expressly listed in section two. The Board may not require an existing facility, institution or agency to serve the Board inconsistently with their functions, or with the authority of their officers, or with the laws and regulations governing their activities. The Board may not make use of any private agency without its consent, or pay a private institution or agency for services which a public institution or agency is willing and able to perform.

Paragraph (c) qualifies the obligation of public institutions and agencies to accept and care for delinquent children or convicted persons who are sent to them by the Board as they would be required to do had these persons been committed to them by a juvenile court, district court or superior court.

Paragraph (d) authorizes and requires the Board to periodically inspect all public and private institutions and agencies whose facilities it is using. These institutions and agencies, whether public or private, are required to allow the Board reasonable opportunity to examine or consult with the persons committed to the Board who have been placed in the custody of the institution or agency.

Paragraph (e) states that neither placement of a person in any institution or agency not operated by the Board, nor the release of any person from such an institution or agency, terminates the control of the Board over such person. No person placed in a public or private institution or agency may be released without the approval of the Department.

In essence, section ten established the Board's authority to make use of all public or private correctional facilities for juveniles within the Commonwealth, and within the bounds of the laws regulating those facilities. Moreover, the Board was required to inspect the facilities of those institutions or agencies at which children had been placed.

2. St. 1950, Ch. 545, expanded paragraph (a) to make use of correctional facilities "within the Commonwealth whenever feasible, otherwise outside the Commonwealth..." Thus, the Board's authority to transfer children to institutions or agencies outside the Commonwealth was established.

3. St. 1952, Ch. 605, s. 12, further clarified the first sentence of paragraph (a). It reads; "For the purpose of carrying out its duties and effectuating the decisions of the youth service board with respect to the classification, placement for training and treatment, transfer, release under supervision and discharge of persons committed to the board, the director of the division of youth service is authorized to make use of..."

4. St. 1969, Ch. 838, s. 39, substituted "department of youth services" for "board" and "commissioner of youth services" for "director of the division of youth services.

In addition, paragraph (a) was modified to require the Commissioner of Youth Services, with the assistance of the Executive Secretary to the Advisory Committee of the Department, to convene a meeting of a Youth Services Coordinating Council, twice annually. The Council shall be composed of the Commissioners of Public Health, Mental Health, Education, Public Welfare, Corrections, Probation and the Commissioner of Administration and Finance or their designees. The Council shall meet for the purposes of providing coordination and mutual assistance in the carrying out and evaluation of all the programs relating to youth services in the Commonwealth.

5. St. 1973, Ch. 925, s. 43, amended paragraph (a), reducing the minimum age at which the department could transfer the custody of a person to a penal institution from twenty-one to eighteen.

6. St. 1978, Ch. 478, s. 67, inserted "or district court juvenile session" in the first sentence of the first paragraph of subsection (a).

Chapter 120, s. 11: Places for detention and diagnosis; treatment and training facilities; facilities to aid persons given conditional releases; forest or farm school camps

1. St. 1948, Ch. 310, s. 22(11), authorized the Board to establish facilities for the treatment of persons committed to them.

Specifically, when funds are available, the Board may: establish and operate places for detention and diagnosis; establish and operate additional treatment and training facilities necessary to classify, segregate and handle delinquents; and, establish facilities to aid persons given conditional release or discharged by the Board to find employment and lead a law-abiding existence.

2. St. 1952, Ch. 605, s. 13, substituted "director of the division of youth service" for the first reference to the "board".

3. St. 1955, Ch. 766, s. 5, vested the Board with authority to establish forest or farm school camps as a specific treatment alternative.

The additional wording of the amendment provides that the Board may (d) "establish, on land under the control of the department of natural resources or upon other sites approved by the commissioner of natural resources, forest or farm school camps to which children placed in the custody of the youth service board may be sent for such education and training as may be deemed best for their readjustment, the work projects of which may be assigned in farming or reforestation, maintenance and development of state forests and recreational areas as may be approved by the commissioner of natural resources."

4. St. 1957, Ch. 532, amended s. 11 by striking the letter "(d)", and inserting "and shall" in its place.

5. St. 1969, Ch. 838, s. 40, substituted "commissioner of youth services" for "director of division of youth service", and substituted "department" for "board".

6. St. 1975, Ch. 706, s. 194, substituted "commissioner of environmental management" for "commissioner of natural resources."

Ch. 120, s. 12: Parole; placing custody in home or family; agents; investigations; notice to commissioner of public welfare; resumption of care

1. The 1921 codification of Ch. 120, s. 21, authorized the trustees to release children on parole at any time, to place them in the custody of "their usual homes or in any situation or family that has been approved by the trustees."

In addition, the trustees were authorized to employ agents for investigating places and visiting children.

Immediately upon placing a child, the trustees were required to give notice to the Department of Public Welfare of the name of the child, and the name and residence of the person in whose care the child was entrusted.

At any time until the expiration of the commitment period, the trustees could resume the care and custody of children released on parole, and recall them to the school to which they were originally committed.

Finally, the trustees were directed to place children in families or homes sharing the children's religious beliefs. Should this be impracticable, emphasis should be placed on providing a locality where those children would have the opportunity to attend religious services of their belief.

2. St. 1948, Ch. 310, s. 22(12), substituted "board" for "trustees".

Additionally, the Board's power to release a child at any time to an approved placement was subject to the limitation that "no child shall be returned to his own home immediately after commitment and the initial diagnosis without the approval of the committing court." Thus, the board's discretion to immediately place a child on parole was subject to judicial scrutiny.

In addition, the board was explicitly authorized to provide funds for all or partial maintenance (subject to appropriation) for any child in their custody, who was placed in the charge of any person.

3. St. 1949, Ch. 593, s. 3, substituted the words "under supervision" for "on parole."

4. St. 1952, Ch. 605, s. 14, substituted "director of the division of youth services" for "board", in the second and third sentences of section twelve. In addition, "director of the division of child guardianship" was substituted for "department of public welfare."

5. St. 1969, Ch. 838, s. 41, substituted "commissioner of youth services" for "director of division of youth services," and "department" for "board," and "department of public welfare" for "director of the division of child guardianship."

Ch. 120, s. 13: Escape; breach of parole; arrest; detention

1. The 1921 codification of Ch. 120, s. 12, provided that a boy committed to the Lyman School or the Industrial School for Boys or a girl committed to the Industrial School for Girls, who has escaped or broken the conditions of parole, may be arrested without a warrant by a sheriff, deputy sheriff, constable or police officer. The child may be kept in custody in a suitable place and detained until the child may be removed to the school from which he or she escaped or was released.

2. St. 1948, Ch. 310, s. 13, expanded the language of this provision to reflect the creation of the Youth Services Board. The section was rewritten to apply to "a boy or girl committed to the board and placed by it in any institution or facility."

   In addition, a child who escaped or broke parole could be arrested without a warrant by the same law enforcement personnel previously listed or by "a parole officer employed by the board."

3. St. 1949, Ch. 593, s. 4, amended "parole officer employed by the board" to read "person employed and authorized by the board."

4. St. 1969, Ch. 838, s. 42, substituted "department" for "board" where appearing.

Ch. 120, s. 13A: Compensation for property damage caused by inmates; notice of damage; claim; filing

1. St. 1953, Ch. 619, s. 1, established a means of redress for property damaged by an "inmate" in the process of escaping from any institution under the Board's management, governance and care, as provided for by section two.

   The Board was required to make a written request for compensation, and any funds approved had to be paid out of the state treasury. The amount was to be fixed by the Attorney General, after his determination of what was just and reasonable. This determination was subject to the approval of the Governor and Council. A claim for compensation had to be filed within one year of the date on which the damage occurred.

2. St. 1969, Ch. 838, s. 43, substituted "department" for "board".

Ch. 120, s. 14: Applications for new commitments for insane, feeble minded and sexually psychopathic persons

1. St. 1948, Ch. 310, s. 22(14), established the Board's authority to apply to the proper court for a new commitment to the appropriate agency, for any child who the Board finds to be "insane or feeble minded or a defective delinquent" (under G.L. C. 123), or a sexual psychopath (under G.L. C. 123).

2. St. 1954, Ch. 685, s. 2, deleted the phrase "or a defective delinquent" from s. 14.

3. St. 1969, Ch. 838, s. 44, substituted "department" for "board" and inserted "or a potential psychotic, as defined and determined by the assistant commissioner of the bureau of clinical services," as a potential third classification of juveniles subject to an alternative commitment.

Ch. 120, s. 15: Transfers from Massachusetts reformatory and reformatory for women

1. The 1921 codification of Ch. 120 provided three sections to deal with the issue of transferring a child between institutions.

Section 14 authorized the trustees of the Lyman School, or the Suffolk School for Boys to transfer a boy to the Industrial School for Boys, with the consent of the trustees. The Department of Public Welfare could transfer boys between fifteen and eighteen to the Industrial School for Boys.

Section 15 provided that with the consent of the trustees, the Commissioner of Correction could transfer any boy under seventeen sentenced to the Massachusetts Reformatory, or any girl under seventeen sentenced to the Reformatory for Women, to the appropriate industrial school.

Section 16 authorized the trustees of the Lyman School for Boys or the Industrial School for Boys to transfer any boy who has proved unmanageable or inappropriate to remain in those institutions, to the Massachusetts Reformatory; or transfer any girl committed to the Industrial School for Girls to the Reformatory for Women.

Upon application for transfer by the trustees, the Commissioner of Correction may transfer any inmate considered incorrigible or unfit by the trustees to the state farm until the sentence expires, or until the objective of the transfer has been accomplished. Transfers must be accompanied by a medical report and a written statement containing the person's history, conduct and family history.

2. St. 1948, Ch. 310, s. 22(15), which revised Ch. 120, deleted any reference to the material contained in sections fourteen and sixteen. It recognizes the discretionary authority of the Youth Service Board to place children in appropriate institutions, or to make changes where necessary. The 1948 revision only retained the Commissioner of Correction's authority to transfer custody of a child under seventeen, sentenced to the Massachusetts Reformatory or the Reformatory for Women. Transfer was permitted with the consent of the Board for the purpose of best serving the needs of the boy or girl and protecting the interests of the public.

3. St. 1969, Ch. 838, s. 45, substituted "department" for "board" and "care" for "custody."

Ch. 120, s. 16: Discharge

1. The 1921 codification of Ch. 120, s. 17, provided that the trustees surrender custody for the remainder of his or her minority of any boy or girl transferred to the Massachusetts Reformatory or the Reformatory for Women. Custody would be awarded to the institution to which the transfer was made.

2. St. 1948, Ch. 310, s. 22(16), revised section seventeen and provided that the Board must discharge any wayward or delinquent child committed to it, when he reaches his twenty-first birthday, unless a petition is filed by the Board under section seventeen.

In addition, every person committed to the Board after conviction in criminal proceedings must be discharged upon that person's twenty-third birthday, unless a petition is filed under section seventeen.

3. St. 1969, Ch. 838, s. 46, substituted "department" for "board."

4. St. 1973, Ch. 925, s. 44, substituted "eighteenth" for "twenty-first" in the first sentence, and "twenty-first" for "twenty-third" in the second sentence.

In addition, the Department was explicitly authorized to continue to exercise responsibility for any person under twenty-one, for the purpose of specific educational or rehabilitative programs under conditions agreed upon by the Department and the individual, and terminable by either party.

Ch. 120, s. 17: Procedure when discharge deemed dangerous; control beyond age limit; order; application; statement of facts; review of order

1. St. 1948, Ch. 310, s. 22(17) established a procedure for the Board to retain custody of a person who has reached the age limits set by section sixteen.

The Board may make an application to the committing court to retain control beyond the period of commitment, whenever the Board is of the opinion that discharge would be "physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality."

The order must be made at least ninety days prior to the time of discharge stated in section sixteen. The application should contain a written statement of the basis for the Board's opinion that discharge would be physically dangerous to the public. No application should be denied because of its form or an asserted insufficiency of its allegations. Each order should be reviewed on its merits.

2. St. 1969, Ch. 838, s. 47, substituted "department" for "board."

Ch. 120, s. 18: Notice of application for review of order; hearing; appointment of counsel; court order

1. St. 1948, Ch. 310, s. 22(18), provided that upon the Board's application for an order for review as specified in section seventeen, the court must notify the person whose liberty is involved. If that person is not sui juris (having the capacity to manage his or her affairs), then his parent or guardian must be notified. If the parent or guardian can not be reached, the court is required to appoint a person to act in their place.

The person who receives notification must be afforded an opportunity to appear in court with the assistance of counsel and with the power to subpoena witnesses and produce evidence. If the person is unable to engage counsel, the court must appoint counsel to represent him.

The court may confirm the board's order refusing discharge when the court is satisfied that discharge would be physically dangerous to the public because of his mental or physical deficiency, disorder, or abnormality. Otherwise, the court must disapprove the order.

2. St. 1969, Ch. 838, s. 48, substituted "department" for "board."

Ch. 120, s. 19: New orders if control continued; periodic applications for review; procedure

1. St. 1948, Ch. 310, s. 22(19), provided that the board retains control over a person when an extension order under section eighteen has been confirmed by the court.

Unless the person has been previously discharged under the provisions of section 6(e), the Board must renew the order and subject it to the court's review every two years for wayward or delinquent children, or every five years for persons committed following criminal proceedings. This process may be repeated as often as the Board decides that it is necessary for the protection of the public. The Board may transfer custody of any person over twenty-one to the Department of Correction for placement in an appropriate institution, in order to protect other children and adolescents.

Unless the Board acts to extend commitment, or the court confirms the extension order, every person shall be discharged from the control of the Board at the

termination of the commitment period.

2. St. 1969, Ch. 838, s. 49, substituted "department" for "board."

3. St. 1973, Ch. 925, s. 45, substituted "eighteen" for "twenty-one" as the minimum age at which the Department may transfer custody of a person to the Department of Corrections.

Ch. 120, s. 20: Appeals

1. St. 1948, Ch. 310, s. 22(20), established a procedure for appeal for a person whose commitment has been extended by a Board order.

The person may appeal to the superior court for a reversal or modification of the confirmation. The appeal is to be taken in the manner provided by law for appeals from judgments of an inferior court in criminal cases.

The superior court is authorized to affirm, modify or reverse the lower court order. Pending the appeal, the appellant shall remain under the control of the Board.

2. St. 1969, Ch. 838, s. 50, substituted "department" for "board."

3. St. 1978, Ch. 478, s. 68, amended section 20 to provide that "a district court jury session" was the forum in which to appeal a confirmation of extension of commitment order issued under the provisions of sections eighteen and nineteen.

These appeals were to be taken in the same manner as appeals from judgments of "a justice sitting without jury" in criminal cases.

Section 20 was further amended; "jury session" was substituted for "superior court", and "justice" for "lower court", to reflect the change in procedure of appeal to district court instead of superior court.

Finally, for no apparent reason, "board" was substituted for "department" in paragraph's (b) and (c).

Ch. 120, s. 21: Effect of commitment on application for public service; discharge; restoration of civil rights; records; inspection; consent; evidence in other proceedings

1. St. 1948, Ch. 310, s. 22(21), provided that a commitment to the custody of the Board of a wayward or delinquent child, shall not disqualify that child from any future examination, appointment or application for public service under the government of the Commonwealth or any political subdivision of the Commonwealth.

Discharge of a person committed to the Board for conviction of a crime, when ordered by the Board, shall restore that person to all civil rights and shall have the effect of setting aside the conviction. The prior conviction shall not disqualify the person from any future examination, appointment or application for public service under the government of the Commonwealth or any political subdivision of the Commonwealth.

The records of commitment to the Board shall be withheld from public inspection except with the consent of the Board. However, records concerning any child between seven and seventeen at the time of commitment, shall be open to the inspection of the child, his or her parents, guardian or attorney, at all reasonable times. A commitment to the Board may not be received in evidence or used in any way in any proceeding, except in subsequent proceedings for waywardness or delinquency against the same child, or in imposing a sentence in a criminal proceeding against the same person.

2. St. 1969, Ch. 838, s. 51, substituted "care" for "custody" in the first paragraph, and "department" for "board" where appearing.

Ch. 120, s. 22: Inquiry into effectiveness of methods; information; annual report; contents

1. The 1921 codification of Ch. 120, s. 6, required the trustees of each training school to make a written report to the Commissioner of Public Welfare, summarizing the affairs of each institution for the preceding fiscal year. The reports were to include inventories of the institution and any recommendations for legislation proposed by the trustees. The Commissioner was then required to make an annual report covering these matters.

2. St. 1948, Ch. 310, s. 22(22), revised and expanded the obligation of the board to monitor the progress of its activities.

The Board was authorized to conduct continuing inquiries into the effectiveness of the treatment methods it employs in seeking the reformation of juvenile and youthful offenders. Based on court records, analyzed and tabulated with the assistance of the Board of Probation, the relative merits of treatment methods must be evaluated. The results of these studies shall be made available to the public in an annual report.

This report must contain:

- the number of persons committed to the Board during the fiscal year,
- the disposition of each person under the supervision of the board during that year,
- inventories of institutions under the Board's supervision,
- a statement of the conditions and needs of the facilities under the Board's supervision,
- the progress made toward an integrated rehabilitory system capable of giving the most effective individual treatment for rehabilitation, and
- any recommendations for legislation the Board may wish to make.

3. St. 1969, Ch. 838, s. 52, substituted "department" for "board" where appearing.

Ch. 120, s. 23: Power of department to act as guardian of children

1. The 1921 codification of Ch. 120, s. 22, authorized the trustees to act as guardians for any boy or girl under the age of twenty-one and in their charge, who has neither a living parent or guardian. The trustees were vested with all the power and authority conferred by chapter two hundred and one (which provides for the power of a guardian), except that when a guardian is appointed, the powers conferred upon the trustees cease.

2. St. 1948, Ch. 310, s. 22(23), substituted "board" for "trustees."

3. St. 1969, Ch. 838, s. 53, substituted "department" for "board."

4. St. 1973, Ch. 925, s. 46, substituted "eighteen" for "twenty-one" as the maximum age for which the department may be appointed guardian for a child in its custody.

Ch. 120, s. 23A: Disposition of unclaimed money held for former ward; records

1. The 1921 codification of Ch. 120, s. 23, required the trustees to make earnest efforts to induce boys and girls, on parole and in their charge, to save some portion of their earnings. This money was to be placed in savings banks and held for the benefit of the ward, or expended on his behalf when deemed necessary. The savings were to be paid to the ward when he became twenty-one, or to his legal representative in the event that he died before payment.

2. St. 1948, Ch. 310, s. 23A, revised the second portion of section twenty-three explicitly providing for the disposition of unclaimed money.

The Board must pay annually to the State Treasurer any unclaimed money held for the benefit of former wards whose whereabouts have been unknown for seven years subsequent to his or her coming of age. The mechanics of certifying the transaction are also provided in this section.

3. St. 1969, Ch. 838, s. 54, substituted "department" for "board" where appearing.

Ch. 120, s. 24: Expenditure of gifts

1. The 1921 codification of Ch. 120, s. 24 authorized the trustees to expend any money given for the purpose of erecting houses or other buildings at Lancaster, to increase accomodations at the Industrial School, provided the plans are initially approved by the Governor and Council.

2. St. 1948, Ch. 310, s. 22(24), substituted "board" for "trustees" and "Massachusetts public building commission" for "governor and council".

3. St. 1969, Ch. 838, s. 55, substituted "department" for "board."

Ch. 120, s. 25: Children committed by United States courts

1. The 1921 codification of Ch. 120, s. 25, provided that the provisions of chapter 120 relative to the Lyman School, Industrial School for Boys or Industrial School for Girls extend to boys or girls committed by authority of the courts or magistrates of the United States.

2. St. 1948, Ch. 310, s. 22(25), substituted "board" for "Lyman school, industrial school for boys or industrial school for girls," making the section applicable to commitments by federal court to the board.

3. St. 1969, Ch. 838, s. 56, substituted "department" for "board."

Ch. 120, s. 26: Aiding or assisting in escape

1. The 1921 codification of Ch. 120, s. 26, imposed a penalty of a fine of not more than five hundred dollars or imprisonment for not more than two years, for anyone who aids or assists in the escape of an inmate of the Lyman School, Industrial School for Boys or Industrial School for Girls.

2. St. 1948, Ch. 310, s. 22(26), amended section twenty-six, replacing "an inmate of the Lyman school, industrial school for boys or industrial school for girls," with "a child in the custody of the board."

3. St. 1969, Ch. 838, s. 57, substituted "department" for "board."